Office - Supreme Court, U.S.
FILED
FEB 6 1958
JOHN T. FEY, Clerk

LIBRARY
SUPREME COURT, U.S.

No. 772

In the

United States Court of Appeals

For the Seventh Circuit

No. 11979

UNITED STATES OF AMERICA, *Plaintiff-Appellee,* vs. JOSEPH T. MARZEC, *Defendant-Appellant.*	Appeal from the United States District Court for the Northern District of Illinois, Eastern Division. Honorable John P. Barnes, Trial Judge.

APPENDIX TO DEFENDANT-APPELLANT'S BRIEF.

U. S. C. A. - 7
FILED
JUN 2 8 1957
KENNETH J. CARRICK
CLERK

JOSEPH A. STRUETT,
105 W. Madison Street,
GERALD M. CHAPMAN,
11 So. LaSalle Street,
Chicago, Illinois,
Attorneys for Defendant-Appellant.

INDEX.

Statement pursuant to Rule 12(c) 1
Placita 4
Indictment, filed Dec. 15, 1955 5
Motion of Marzec for severance, filed Jan. 16, 1956 ... 7
Answer to motion, filed Jan. 20, 1956 8
Proceedings of January 23, 1956 10
Order denying motion for severance, entered Jan. 23, 1956 13
Notice of motion, filed Jan. 18, 1957 14
Motion for severance 15
Order re plea of Sobieraj, entered Jan. 18, 1957 17
Proceedings of January 23, 1957 18
Order for severance, etc., entered Jan. 23, 1957 27
Motion to vacate trial date, filed Jan. 29, 1957 28
Ex A—Proceedings of January 23, 1957 69
Order re plea of Brandt, entered Jan. 29, 1957 79
Answer to motion to vacate 80
Proceedings of February 4, 1957 87
Order re trial, entered Feb. 4, 1957 91
Orders continuing disposition re Sobieraj and Brandt, entered Feb. 4, 1957 92

STATEMENT OF EVIDENCE.

WITNESSES FOR THE GOVERNMENT.

Testimony of:
Banach, Henry S. 120
Erskine, Robert N. 105
Hoppe, William J. 103
Klenha, Robert 233
Kobylinski, Stephen 138

Kubon, Sophie 93
Miller, Max E..... 107
Milton, Cyril I..... 100
Osheroff, Samuel J..... 146
Pranica, Joseph 94
Reeb, Frank William 235
Riewer, Nicholas M..... 165
Ruggaber, William M..... 182
Scott, Thomas G..... 96
Sheldon, J. Cutler 119
Sobieraj, Bruno L..... 134
Wilson, Arthur 124
Wolfe, Leonard B..... 154
Worcester, Kenneth N..... 168

WITNESSES FOR DEFENDANT.

Testimony of:
Hauptman, Herbert M..... 228
Marzec, Joseph T.....196, 217
Mroz, August F..... 190
Rieger, Louis 212
Sipiora, Dorothy E..... 226
Colloquy 235
Charge to Jury..... 255
Motion to withdraw Juror, etc., filed Feb. 11, 1957.... 266
Affidavit of Joseph A. Struett..... 267
Order re trial, etc., entered Feb. 11, 1957..... 277
Order re trial, etc., entered Feb. 12, 1957..... 278
Verdict, filed Feb. 13, 1957..... 279
Motion for Judgment, etc., filed Feb. 18, 1957..... 280
Proceedings of February 18, 1957 297
Order dismissing Indictment as to Kusper, entered Feb. 18, 1957..... 298
Order continuing as to Brandt, entered Feb. 18, 1957.. 298

Order continuing as to Sobieraj, entered Feb. 18, 1957 299
Order continuing motion for Judgment, etc., entered Feb. 18, 1957 299
Order to return Bond to Surety re Kusper, entered Feb. 18, 1957 300
Judgment as to Brandt, entered Feb. 21, 1957..... 301
Judgment as to Sobieraj, entered Feb. 21, 1957..... 302
Probation Order as to Sobieraj, entered Feb. 21, 1957. 303
Judgment as to Marzec, entered Feb. 21, 1957..... 305
Notice of Appeal, filed Feb. 21, 1957 306

1 IN THE UNITED STATES DISTRICT COURT

For the Northern District of Illinois.

The United States of America, *Plaintiff*, *vs.* Frank A. Brandt, Stanley T. Kusper, Bruno J. Sobieraj, and Joseph T. Marzec, *Defendants.*	No. 55 CR 679.

STATEMENT IN ACCORDANCE WITH RULE 12 (c) OF THE COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

(1) This action was commenced by the return of an Indictment on December 15, 1955, by the Grand Jury of the Northern District of Illinois, at Chicago, Illinois.

(2) The original parties to this action were the United States of America, Plaintiff, and Frank A. Brandt, Stanley T. Kusper, Bruno J. Sobieraj, and Joseph T. Marzec, Defendants.

(3) The indictment consisted of eight (8) Counts, each defendant by separate counts of said indictment, being charged with attempting to defeat and evade his individual income taxes for the years 1949 and 1950. Counts 1 and 2 related to Brandt; Counts 3 and 4 to Kusper; Counts 5 and 6 to Sobieraj; and Counts 7 and 8 to Marzec.

4. All of the defendants voluntarily surrendered and furnished bail.

(5) On January 16, 1956, the defendant Kusper entered a plea of not guilty, and on February 21, 1956, the
2 defendants Brandt, Sobieraj and Marzec entered pleas of not guilty.

(6) On January 18, 1957, the defendant Bruno J. Sobieraj withdrew his plea of not guilty, as to Count 5 of the indictment, and entered a plea of guilty to said count, and Count 6 of said indictment was dismissed as to him.

(7) On January 29, 1957, the defendant Frank A. Brandt withdrew his plea of not guilty, as to Count 1 of the indictment, and entered a plea of guilty thereto. On motion of the Government, Count 2 was dismissed as to him.

(8) On February 4, 1957, the defendant Joseph T. Marzec was placed on trial. The selection of the jury commenced, and the trial continued through February 4, 5, 6, 7, 11, 12, and 13, 1957, and was heard before the Honorable John P. Barnes, Judge of the District Court for the Northern District of Illinois.

(9) On February 13, 1957, the Jury returned a verdict finding the defendant Joseph T. Marzec guilty as charged in Counts 7 and 8 of indictment.

(10) On February 18, 1957, on motion of the government, the indictment was dismissed as to the defendant Stanley T. Kusper.

(11) On February 21, 1957, defendant Frank A. Brandt was ordered committed for one year on Count 1 of said indictment and probation was denied.

(12) On February 21, 1957, the defendant Bruno J. Sobieraj was ordered committed for one year on Count 5 of said indictment, the execution of sentence was suspended, and he was placed on probation for two years.

3 (13) On February 21, 1957, the Court entered a judgment upon said verdict against Marzec, and sentenced the defendant Joseph T. Marzec to three years, in the custody of the Attorney General of the United States on each of said Counts 7 and 8 of said indictment, sentences

to run concurrently, and admitted him to bail pending appeal upon the filing of a Bond of $10,000.00.

(14) Notice of Appeal was filed on February 21, 1957, on behalf of the defendant Joseph T. Marzec. His Appeal was that day docketed in the Court of Appeals, and he was ordered released pending Appeal upon the furnishing of a Bond of $7500.00, which was furnished that day, and approved by Order of the Court of Appeals.

Joseph T. Marzec,
Defendant

and

Joseph Struett,
Attorney for Defendant,
By Gerald M. Chapman.

Joseph Struett,
Attorney for Defendant,
105 West Madison Street,
Chicago, Illinois.

4 Pleas had at a regular term of the United States District Court for the Eastern Division of the Northern District of Illinois begun and held in the United States Court Rooms in the City of Chicago in the Division and District aforesaid on the first Monday of February, being the 4th day thereof, in the Year of Our Lord One Thousand Nine Hundred Fifty-Seven and of the Independence of the United States of America, the 181st Year.

Present:

Honorable John P. Barnes, Chief District Judge.
Honorable William H. Holly, District Judge.
Honorable Philip L. Sullivan, District Judge.
Honorable Michael L. Igoe, District Judge.
Honorable William J. Campbell, District Judge.
Honorable Walter J. La Buy, District Judge.
Honorable J. Sam Perry, District Judge.
Honorable Win G. Knoch, District Judge.
Honorable Julius J. Hoffman, District Judge.
Roy H. Johnson, Clerk.
William W. Kipp, Sr., Marshal.

Thursday, February 21, 1957.

Court met pursuant to adjournment.

Present: Honorable John P. Barnes, Trial Judge.

5 UNITED STATES DISTRICT COURT,

Northern District of Illinois,

Eastern Division.

United States of America, *vs.* Frank A. Brandt, Stanley T. Kusper, Bruno L. Sobieraj, and Joseph T. Marzec.	No. 55 CR 679 (26 U. S. C., Section 145 (b))

The February 1955 Grand Jury charges:

That on or about the 15th day of March, 1950, in the Northern District of Illinois, Eastern Division,

Frank A. Brandt,

11 Count Seven.

The February 1955 Grand Jury further charges:

That on or about the 15th day of March, 1950, in the Northern District of Illinois, Eastern Division,

Joseph T. Marzec,

late of Chicago, Illinois, who during the calendar year 1949 was married, did wilfully and knowingly attempt to evade and defeat a large part of the income tax due and owing by him and his wife to the United States of America, for the calendar year 1949, by filing and causing to be filed with the Collector of Internal Revenue for the First Internal Revenue Collection District of Illinois, at Chicago, Illinois, a false and fraudulent joint income tax return on behalf of himself and his said wife, wherein it was stated that their joint net income for said calendar year was the sum of $10,789.43, and that the amount of

tax due and owing thereon was the sum of $1,397.64; whereas, as he then and there well knew, he received during the said calendar year additional income consisting of his share of the proceeds from a joint venture conducted by and between Frank A. Brandt, Stanley T. Kusper, Bruno L. Sobieraj, and himself, and that the joint net income for himself and his wife for the said calendar year was, in fact, the sum of $19,830.78, upon which said net income there was owing to the United States of America an income tax of $3,658.16; in violation of 26 U. S. C., Section 145(b).

12 Count Eight.

The February 1955 Grand Jury further charges:

That on or about the 15th day of March, 1951, in the Northern District of Illinois, Eastern Division,

Joseph T. Marzec,

late of Chicago, Illinois, who during the calendar year 1950 was married, did wilfully and knowingly attempt to evade and defeat a large part of the income tax due and owing by him and his wife to the United States of America for the calendar year 1950, by filing and causing to be filed with the Collector of Internal Revenue for the First Internal Revenue Collection District of Illinois, at Chicago, Illinois, a false and fraudulent joint income tax return on behalf of himself and his said wife, wherein it was stated that their net income for said calendar year was the sum of $23,881.79, and that the amount of tax due and owing thereon was the sum of $5,077.72; whereas, as he then and there well knew, he received during the said calendar year additional income, consisting of his share of the proceeds from a joint venture conducted by and between Frank A. Brandt, Stanley T. Kusper, Bruno L. Sobieraj and himself, and that the joint net income for himself and his

wife for the said calendar year was, in fact, the sum of $65,593.67, upon which said net income there was owing to the United States of America an income tax of $25,-423.86; in violation of 26 U. S. C., Section 145(b).

A True Bill:

Charles S. Netzorg,
Foreman.

R. Tieken,
United States Attorney.

21 IN THE UNITED STATES DISTRICT COURT.
* * (Caption—55-CR-679) * *

MOTION.

(Filed Jan. 16, 1956. Roy H. Johnson, Clerk.)

Comes now the defendant, Joseph T. Marzek, by Joseph A. Struett, his attorney, and respectfully requests that an order be entered by this Honorable Court granting a severance to said Joseph T. Marzek in the above cause.

In support of the above motion, the defendant, Joseph T. Marzek, represents to this Court that his interests in the above cause are antagonistic to those of the other defendants herein and that the Government and the United States Attorney have full knowledge of the facts establishing the antagonistic interests as aforesaid.

Joseph T. Marzek,
By Joseph A. Struett,
His Attorney.

Joseph A. Struett,
105 West Madison Street,
Chicago 2, Illinois.
FRanklin 2-0665.

36 UNITED STATES DISTRICT COURT.
* * (Caption—55-CR-679) * *

GOVERNMENT'S ANSWER TO MOTIONS FOR SEVERANCE.

Now comes the United States of America, by R. Tieken, United States Attorney, and states the following:

1. Upon trial of the above entitled cause, is is anticipated that the evidence will show that:

A. During the taxable years 1949 and 1950, the defendants, Frank A. Brandt and Stanley T. Kusper, were officers of the Polish Roman Catholic Union of America, being respectively the Treasurer and General Counsel of said organization. During the same years, the defendant, Joseph T. Marzec, was an employee of the organization, and the defendant, Bruno L. Sobieraj, was employed as an appraiser in real estate transactions.

B. In connection with the application for and approval of certain real estate mortgage loans made by the Union during the said years, the defendants herein entered into a joint venture whereby payments, in addition to those customarily required by the Union on real estate loans, were required to be made to the defendant, Joseph T. Marzec, and were in fact made to him by certain real estate brokers in order to obtain favorable action and approval on advantageous terms to said brokers of mortgage loans submitted to the Union.

C. In accordance with the understanding by and between the defendants, the defendant, Joseph T. Marzec, retained his share of the proceeds and distributed the balance collected from these transactions to the other defendants.

37 D. Each of the defendants during the said years attempted to evade the tax due and owing on his share of the proceeds of the joint venture by failing to report certain sums received from the said joint venture.

2. All of the unreported income and evaded taxes charged to each defendant as set forth in the indictment are based upon and arise from the receipt by each defendant of his respective share of the proceeds of the joint venture referred to previously. No other source of unreported income will be presented in this case.

3. The Government submits from its knowledge of the evidence expected to be produced in court that:

A. A joint trial of the defendants will result in a substantial saving of time by avoiding the presentation to four separate juries of considerable evidence common to all defendants.

B. A joint trial can be held without confusing the jury, without prejudice to the defendants' rights, and without creating complexing and unmanageable problems during the course of trial which certain defendants seem to anticipate. If counsel for the defendants truly desire to avoid confusion and complexity as they seem to indicate in their motions, with their cooperation toward that goal an orderly joint trial of this case may be conducted.

For the reasons stated above, it is respectfully submitted that any and all motions for severance and for separate trials be denied.

R. Tieken,
United States Attorney.

37a Filed Jan. 20, 1956. Roy H. Johnson, Clerk.

1 United States of America,
Northern District of Illinois,
Eastern Division.

IN THE UNITED STATES DISTRICT COURT.
* * (Caption—55-CR-679) * *

(Filed Nov. 8, 1956. Roy H. Johnson, Clerk.)

TRANSCRIPT OF PROCEEDINGS

had in the above-entitled cause before the Honorable John P. Barnes, Chief Judge of said Court, in his court room in the United States Court House at Chicago, Illinois, on January 23, 1956, beginning at 10:00 o'clock a. m.

Appearances:

Hon. Robert Tieken, United States District Attorney (450 U. S. Court House, Chicago 4, Illinois), represented by F. William Reeb, Esq., Assistant United States District Attorney, on behalf of the Government;

2 Messrs. Breen, Brumlik & Schaffenegger, (209 South La Salle St., Chicago 4, Ill.), represented by Edwin T. Breen, Esq., on behalf of the Defendant Frank A. Brandt;

Bernard H. Sokol, Esq., (231 South La Salle St., Chicago 4, Ill.), on behalf of the Defendant Stanley T. Kusper;

Leo Klein, Esq., (10 South La Salle St., Chicago 3, Ill.), on behalf of the Defendant Bruno L. Sobieraj;

Joseph A. Struett, Esq., (105 West Madison St., Chicago 2, Ill.), on behalf of the Defendant Joseph T. Marzec.

And thereupon the following proceedings were had herein:—

By the Clerk: No. 55 CR 679, United States of America *vs.* Frank A. Brandt, Stanley T. Kusper, Bruno L. Sobieraj, and Joseph T. Marzec. Defendants' motions for severance.

By the Court: I will hear you gentlemen.

3 How long will the matter take?

By Mr. Sokol: Not over five minutes.

By Mr. Struett: About ten minutes.

By Mr. Klein: Less than that, I think, your Honor.

By the Court: I will hear you, gentlemen. You will be first on the call.

(And thereupon the Court gave attention to other matters upon the call, after which the following further proceedings were had herein:)

By the Clerk: No. 55 CR 679. United States of America *vs.* Frank A. Brandt, Stanley T. Kusper, Bruno L. Sobieraj, and Joseph T. Marzec. Hearing on defendants' motions for severance.

By the Court: Proceed, gentlemen.

I have read your papers.

By Mr. Struett: If your Honor please, I set up that the position of Mr. Marzec is antagonistic to the other defendants, a fact known by the United States Attorney as they filed their answer.

I just want to give your Honor brief quotations

4 from the Government's answer:

"1. Upon trial of the above-entitled cause, it is anticipated that the evidence will show that:

"A. During the taxable years 1949 and 1950, the defendants, Frank A. Brandt and Stanley T. Kusper, were officers of the Polish Roman Catholic Union of America, being respectively the Treasurer and General Counsel of said organization. During the same years, the defendant, Joseph T. Marzec, was an employee of the organization, and the defendant, Bruno L. Sobieraj, was employed as an appraiser in real estate transactions.

"B. In connection with the application for and approval of certain real estate mortgage loans made by the Union during the said years, the defendants herein entered into a joint venture whereby payments, in addition to those customarily required by the Union on real estate loans, were required to be made to the defendant, Joseph T. Marzec, and were in fact made to him by certain real estate brokers in order to obtain favorable action and approval on advantageous terms to said brokers of mortgage loans submitted to the Union."

It is in their answer that that is set forth, that this is a joint venture that they charge. And this is the Government's answer to my motion.

"C. In accordance with the understanding by and between the defendants, the defendant, Joseph T. Marzec, retained his share of the proceeds and distributed the balance collected from these transactions to the other defendants."

Now, my position is very simple, Judge. If they can establish a joint venture they must show a general agreement between the parties, and they must show distribution of those funds between the parties.

And they say that is the only basis of their claim, the non-reported income, as against all of them.

And I wish to reply to that in a verified answer that the only way possible they can show it is by and through the testimony of Mr. Marzec, since most of these payments by him, as he claims, were made to the fund in cash.

And I also set up the other defendants' position which in substance is that they have had no joint venture and have received none of these payments.

I say under these facts, Judge, that the interests of Marzec as against the other defendants are antagonistic to each other, and there should be a severance in this case, either for the other defendants or for Mr. Marzec.

I just came in here, because I am going away, and I wanted to make our position clear to all the defendants and to the Government. And that is all I want to say.

There are some cases here—the cases are not too strong, your Honor; your Honor has got great discretion—it is a question of the Court's discretion.

It seems from the two cases I have found that where there is a real antagonism between certain defendants and other defendants a severance should be granted, particularly where the Government's case against the other defendants is dependent upon the version of one de-
7 fendant as against the other defendants. And they can't establish this joint venture on the facts as given to me without the testimony of Marzec as against these other defendants. And I have set that up in my reply.

And on that basis I say there should be a severance.

• • • • •

55 IN THE UNITED STATES DISTRICT COURT.

• • (Caption—55-CR-679) • •

Monday, January 23, 1956.

Present: Honorable John P. Barnes, Chief District Judge.

This cause coming on for hearing on all motions for severance comes the United States by the United States Attorney come also the defendants Frank A. Brandt, Stanley T. Kusper, Bruno L. Sobieraj and Joseph T. Marzec in their own proper persons and by their counsel and it is

• • • • •

Further Ordered that the motions of the defendants Stanley T. Kusper, Bruno L. Sobieraj and Joseph T. Marzec for severance and separate trial and the motion of the defendant Frank A. Brandt for severance or in the alternative to compel the Government to elect counts be and the same are all overruled and denied.

157 IN THE UNITED STATES DISTRICT COURT.
• • (Caption—55-CR-679) • •

NOTICE.

(Filed Jan. 18, 1957. Roy H. Johnson, Clerk.)

To: Bernard H. Sokol,
1 North LaSalle Street,
Chicago, Illinois,
Attorney for Stanley T. Kusper;

Breen, Brumlik & Schaffenegger,
209 South LaSalle Street,
Chicago, Illinois,
Attorneys for Frank A. Brandt;

Mr. Leo Klein,
10 South LaSalle Street,
Chicago, Illinois,
Attorney for Bruno J. Sobieraj;

Mr. Joseph A. Struett,
105 West Madison,
Chicago, Illinois,
Attorney for Jos. T. Marzec.

Please Take Notice that on Wednesday, January 23, 1957, at 10:00 A. M., I shall appear before the Honorable John P. Barnes, United States District Judge, in Room 653 of the United States Court House, or before such other judge who may be sitting in his place and stead, and there present a motion for a severance of the defendant Joseph T. Marzec from defendants Stanley T. Kusper and Frank A. Brandt as to trial of counts 7 and 8 of the indictment in the above-entitled cause, copy of which motion is attached hereto. You may appear at such time and place as you so see fit.

R. Tieken,
United States Attorney.

158 IN THE UNITED STATES DISTRICT COURT.
* * (Caption—55-CR-679) * *

MOTION FOR SEVERANCE FOR TRIAL AS TO DEFENDANT JOSEPH T. MARZEC.

(Filed Jan. 18, 1957. Roy H. Johnson, Clerk.)

Now comes the United States of America by R. Tieken, United States Attorney, and pursuant to Rule 14 of the Federal Rules of Criminal Procedure moves this Honorable Court to grant a severance of Joseph T. Marzec from the defendants Stanley T. Kusper and Frank A. Brandt and to grant an election by the United States of America to first proceed to trial upon counts 7 and 8 of the indictment in the above-entitled cause and as grounds therefor states as follows:

1. The Government adopts the statements and representations contained in paragraphs one and two of the Government's answer to the defendants' several motions for severance heretofore filed in this cause on January 20, 1956.

2. Defendant Joseph T. Marzec has from time to time during the pendency of this cause, by and through his attorney, Mr. Joseph A. Struett, represented to the
159 United States Attorney that he, Joseph T. Marzec, defendant herein, would be available to testify on behalf of the Government in the above-entitled cause, although he himself is one of the defendants. The United States Attorney has been advised as of January 14, 1957, by Mr. Struett that defendant Marzec will not be available to testify on behalf of the Government as long as the defendant Marzec remains joined for trial with the remaining defendants.

3. The United States of America has reason to believe and so states the fact to be, that defendant Joseph T. Marzec, if available to the Government as a witness in

the trial of defendants Frank A. Brandt and Stanley T. Kusper, can present valuable and direct evidence as to such defendants and each of them which if available will materially shorten the trial of the above-entitled cause as to such defendants. It is anticipated by the United States of America that if the defendant Marzec is severed from defendants Kusper and Brandt for trial that such separate trials may be had more expeditiously than a combined trial as to all three defendants, absent the testimony of Joseph Marzec as to the remaining defendants.

4. The defendant Sobieraj having heretofore entered a plea of guilty as to count five of the indictment in the above-entitled cause has thereby relieved the United States of America of certain lengthy issues of proof which will permit the Government to substantially shorten the 160 evidence to be introduced on its behalf. Defendant Sobieraj has made available to the United States of America additional evidence and will himself be available as a witness on behalf of the Government. It is respectfully submitted that the Government will, because of the present posture of the case, be materially prejudiced if the severance here prayed for is not granted.

5. It is further represented to this Court that in the event this motion for severance is granted as to the defendant Joseph T. Marzec, the Government, with leave of Court, desires to elect to proceed to trial on February 4, 1957, as to such defendant. The Government will be ready at the convenience of the Court to proceed with the trials of the defendants Frank A. Brandt and Stanley T. Kusper immediately upon completion of the trial as to the defendant Marzec, and in the event such severance is granted will call Joseph Marzec as its witness upon such further trial of the defendants Brandt and Kusper.

Respectfully submitted,

R. Tieken,

United States Attorney.

162 IN THE UNITED STATES DISTRICT COURT.
* * (Caption—55-CR-679) * *

Friday, January 18, 1957.

Present: Honorable John P. Barnes, Chief District Judge

This day comes the United States by the United States Attorney comes also the defendant Bruno L. Sobieraj in his own proper person and by his counsel and by leave of Court first had and obtained withdraws his plea of not guilty heretofore entered as to Count 5 of the Indictment and being now arraigned upon said count 5 pleads guilty thereto and on motion of the Government by the United States Attorney it is

Ordered that Count 6 of the Indictment be and the same is hereby dismissed as to said defendant and it is

Further Ordered that this cause be and the same is hereby continued for disposition as to the defendant Bruno L. Sobieraj to February 4, 1957 at 10 A. M.

1 United States of America
Northern District of Illinois
Eastern Division

IN THE UNITED STATES DISTRICT COURT.
* * (Caption—55-CR-679) * *

(Filed Mar. 8, 1957. Roy H. Johnson, Clerk.)

TRANSCRIPT OF PROCEEDINGS

had in the above-entitled cause before the Honorable John P. Barnes, Chief Judge of said Court, in his court room in the United States Court House at Chicago, Illinois, on Wednesday, January 23, 1957, at 10:00 o'clock a.m.

Appearances:

Hon. Robert Tieken, United States Attorney, (450 U. S. Court House, Chicago 4, Ill.), represented by Albert F. Manion, Esq., on behalf of the Government;

Bernard H. Sokol, Esq., on behalf of Defendant Stanley T. Kusper;

2 Messrs. Breen, Brumlik & Schaffenegger, (209 S. LaSalle St., Chicago 4, Ill.), represented by Edwin T. Breen, Esq., and John V. Schaffenegger, Esq., on behalf of Defendant Frank A. Brandt;

Leo Klein, Esq., (10 S. LaSalle St., Chicago 3, Ill.), on behalf of Defendant Bruno L. Sobieraj;

Joseph A. Struett, Esq., (105 W. Madison St., Chicago 2, Ill.), on behalf of Defendant Joseph T. Marzec.

And thereupon the following proceedings were had herein:—

By the Clerk: No. 55 CR 679, United States of America *vs.* Frank A. Brandt, et al.

Motion of the Government for severance for trial of defendant Joseph T. Marzec.

By Mr. Manion: If the Court please, one of the defense attorneys has not yet arrived, Mr. Bernard Sokol.

Do you want to pass this for a moment until he arrives?

By Mr. Struett: If the Court please, I could be
3 heard on my motion. It is very short.

The motion does not give us very much time. It sets up facts; it is not verified, it contains no brief.

I would like ten days to answer, verified, and I will have my brief on file as required.

By the Court: What is the motion?

By Mr. Manion: Your Honor, this is a motion by the United States asking for a severance of the defendant Marzec from the defendants Brandt and Kusper, for trial.

Exactly a year ago today, your Honor, this Court heard various motions for severance filed on behalf of each of the defendants in the case. At that time the United States opposed such severance.

The motion this morning admittedly is a drastic change in the Government's position in this matter.

The reason for the motion at this time is this: The defendant Sobieraj, as of last Friday, appeared and entered a plea of guilty, and has indicated that he would testify for the Government if called as a witness. And we have advised the attorneys representing the other defendants—
4 (At this point there was an interruption of the proceedings, due to a disturbance in the corridor outside the court room door; after which the following further proceedings were had herein:—)

By Mr. Manion: To resume, your Honor, this motion this morning represents a substantial change in the Government's position, as we realize.

And the reason for it is prompted by the entry of a plea by the defendant Sobieraj—

By the Court: What was that last name? I didn't get it.

By Mr. Manion: The reason for this motion has been prompted in the first place by the entry of the plea by the defendant Sobieraj, and an indication by him that he will be willing to testify on behalf of the Government.

He has also made available to the United States additional documentary evidence, which we have not had previously. And we have been examining it since Friday, when we received it.

If counsel for the defense desire to see that evidence we will be able to make that available to them.

5 I tell them now for the record.

In the first instance this case was originally prepared and developed by the Internal Revenue Service as to the defendant Marzec only.

The defendant Marzec, at his own request, and by advice of counsel—and I think Mr. Struett will tell you this—appeared before the Grand Jury and gave testimony, which led to the inclusion of the other three defendants.

The United States attorney has been under the impression that the defendant Marzec would be available to testify for the Government in this case even though he was a defendant. However, Mr. Struett has now advised us that he will not be available to testify for the Government so long as he remains joined to the other defendants for trial.

His testimony is the best direct evidence to the defendants, and we believe by using the defendant Sobieraj, who has pleaded guilty, and if we can call the defendant Marzec we may very well shorten this trial and avoid many complicated issues and circumstantial proof.

Now, in fairness to Mr. Struett I will say for the rec-

6 ord at this time that Mr. Struett has not represented to the United States that he would permit us to call Mr. Marzec as a witness, or that he would make Mr. Marzec

available to us if we were to try Mr. Marzec in advance of the other two defendants. He has petitioned the Court for a severance as to Marzec, and to continue his trial until a later date.

However, it is the position of the United States that we would prefer to try the defendant Marzec first, because we wish no confusion in the record as to any possible equitable immunity in so far as we can control it with relation to the defendant Marzec.

There has been no deal made with him. That is not the reason for this. We believe the only reason we are estopped from calling him under the present status of the case is under Section 3481, Title 18, prohibiting a defendant from appearing except at his own request.

It is our understanding of the law that if the severance is granted the defendant Marzec, as to a separate trial, that he then may be called by the Government as a witness under subpoena in the trial of the other two defendants in the cause. And that is essentially the reason for the motion.

7 I would also advise the Court, and the other defense attorneys, that as of yesterday the United States has obtained new and additional evidence as to the defendant Brandt and the defendant Kusper.

That evidence has just come in to our possession, and only partially examined at the time, as of yesterday. I believe that we shall have to file, in fairness to the defendants, and as a part of the record, an amended bill of particulars, which we will attempt to do by Friday, as to the other two defendants.

That additional evidence may very well afford an additional reason as to severance for trial as to them, because at the time these motions for severance were argued before the Court a year ago today, at that time to the knowledge of the United States the evidence would be essentially the

same as to all four defendants. But at this time, as of yesterday we have received additional facts which would tend to throw light upon the guilt or innocence of the defendants Brandt and Kusper which would not include the defendant Marzec.

By Mr. Struett: Well, if your Honor please, I would like to answer these questions or these statements under oath, and file a brief.

This is a complete change of position, and it is very prejudicial to the rights of my defendant.

By the Court: In what respect?

By Mr. Struett: In every respect. I would like to argue it. I am working on an answer and a brief, and I would like to have it on file, and I would like to argue it.

By the Court: When do you want to try this case?

By Mr. Manion: The matter has been set for trial for February 4th, your Honor, and the Government will be prepared to proceed at that time.

By the Court: What is the number of the case?

By Mr. Manion: It is 55 CR 679.

By the Court: What time was it started?

(Documents handed to the Court.)

By the Court: It was started almost two years ago. It is almost time to dispose of it.

By Mr. Breen: If the Court please--

By the Court: Wait a minute.

Now, if defendants in a criminal case have rights to be tried together that is a new one to me.

Is that what you contend?

By Mr. Struett: No. And I don't like to get in an argument here on a motion where I want to file an answer and a brief on it.

By the Court: No. I just want to find out what possible issues could be made on the motion of the Government for a severance.

By Mr. Struett: They should have told your Honor a year ago that they can't make out a case without my defendant.

By the Court: Well, that may be.

By Mr. Struett: Then they come in here, and they refuse a motion for a severance, and now at the last minute, knowing that I am not ready for trial, and then they want to put my client to trial first, ahead of the other defendants and deprive them of substantial rights which he admits we may have under Supreme Court authority.

By the Court: My dear man, your client has been a defendant in this court since the early months of 1955.

By Mr. Struett: I understand.

By the Court: He has pleaded not guilty.

By Mr. Struett: I understand.

Now, they have completely changed their position. And I would like to answer this motion, and I would like to file a brief.

By the Court: Now, tell me, what objection can you make to a motion for severance?

By Mr. Struett: I have no objection to the motion for severance.

By the Court: Motion for severance is granted.

By Mr. Struett: All right.

By the Court: Now, what else?

By Mr. Struett: Now, I don't know whether these other defendants—

By the Court: What else is there to be determined?

By Mr. Struett: Then he wants to try my man first. I want to answer to that part of his motion.

By the Court: Well, tell me what objection you can have?

By Mr. Struett: Why, I am not ready for trial. It would be prejudicial of my client's rights. And it is a flagrant violation, how he misled me in this matter. And I will set it up under oath; that is exactly the situation, I

11 will set that up by verified motion and answer, and give you the facts and the law. That is all I want to do.

By the Court: Well, you have been standing here on a plea of not guilty for almost two years.

By Mr. Struett: Certainly I have, and presuming that he would have to use my client, and would use my client.

By the Court: You say he won't be available to him.

By Mr. Struett: I haven't said that.

By the Court: He stated that.

By Mr. Struett: No, he didn't. He has known all the time my client would be available.

By the Court: Is that right?

By Mr. Manion: Mr. Struett advised me as of last week —and I think Mr. Struett will agree with me—that as long as Mr. Marzec remains joined with the other defendants for trial that he would not be available to the Government as a witness.

By Mr. Struett: My client has been available.

By the Court: Have it ready for trial on the 4th of February at 10:00 o'clock.

By Mr. Struett: Can I file an answer to this motion?

12 By the Court: The motion is granted. You said you had no objection.

By Mr. Struett: To the severance.

By the Court: Your case has been set for 10 these many months—time for you to go to Europe and come back.

By Mr. Struett: If your Honor please, is it your contention—?

By the Court: Get it ready for trial on the 4th of February.

By Mr. Struett: If the Court please, I want to file an answer to his motion to try my defendant first.

By the Court: Well, the whole case has been set for the 4th of February, and it is not going to be changed; you are going to trial on the 4th of February.

By Mr. Struett: If your Honor please—

By the Court: (Addressing the Clerk) Call the next case.

By Mr. Breen: If your Honor please, may I be heard just a moment? This is another aspect of the case. We represent different defendants.

By the Court: What do you want to say?

By Mr. Breen: I represent the defendant Brandt. And up to this time until this surprise change in tactics my defendant was to stand trial jointly with the other defendants. Now, ten days before trial there is a shift in position by the Government, and the case is set for trial, in so far as Brandt is concerned, and Kusper, represented by Mr. Sokol, for February 4th, the same date he is going to trial. How can we get ready for trial, we would have to reset that date.

By the Court: You will go to trial immediately after the other gentleman.

Call the next case (addressing the Clerk).

By Mr. Sokol: If the Court please—

By Mr. Struett: If your Honor please, I assume that I may have an objection to your Honor's ruling. And I would like to have a copy of this transcript as soon as I can get it.

By the Court: You make your business arrangements with the Reporter outside of court, if you please.

By Mr. Sokol: If the Court please, I represent Stanley Kusper. And I don't want to make any representations consonant with what has been said before, so I don't want to inherit some of the Court's reactions.

By the Court: Now, I have heard a good many motions on this. Make your motion, quickly.

By Mr. Sokol: I would like to move that the defendant Kusper be tried separately from the defendant Brandt.

By the Court: Any objection?

By Mr. Manion: We have no objection at this juncture of the case. We have heretofore advised the Court that we felt that these men could in all fairness be tried together, and we see no inherent prejudice to the defendants Brandt and Kusper if they remain jointly tried. If they remained joined for trial we believe that they can be fairly and expeditiously tried together. However, if the Court would prefer otherwise in its discretion—

By the Court: Having granted one severance, you may have a severance. You gentlemen be ready in order because I will try you all right straight through.

By Mr. Sokol: Very well.

Now, I have one other matter to mention, and I think Mr. Manion will bear me out. I have been working pretty hard on this case, and I have been getting ready.

By the Court: Now—

By Mr. Sokol: Let me finish, if your Honor please.

By the Court: Well, I am telling you you will be ready for trial just as soon as I finish the cases in order.

By Mr. Sokol: There has not been one single continuance asked for by me.

By the Court: Listen.

By Mr. Sokol: But, your Honor, you won't let me finish. I want to ask for certain discovery, your Honor.

By the Court: Listen. If you don't quit talking when I talk I will have you removed. When I talk I talk, and nobody interrupts me. Don't try to talk me down.

Now, what is your further motion?

By Mr. Sokol: My further motion is this: In view of the fact that Mr. Manion has indicated that he is going to file a new bill of particulars, and in view of the fact that he has come into possession of new evidence, and that this Court has refused certain motions I have made under 17(c) and under Rule 16, and the fact that Mr. Manion has not

had an opportunity to look at this—and he tells me that he is not yet finished with it—that I be given leave, and I expect to file motions under 17(c) and 16, so that I may find this new discovery.

By the Court: This new matter, tell them about it in your bill of particulars. When are you going to file it?

By Mr. Manion: I will file it on Friday.

16 By the Court: File it on Friday.

And you gentlemen be ready for trial in order—alphabetical order after this one defendant—

By Mr. Manion: Marzec.

By the Court: After Marzec. In alphabetical order.

* * * * *

163 In the United States District Court.

* * (Caption—55 Cr. 679.) * *

Wednesday, January 23, 1957.

Present: Honorable John P. Barnes, Chief District Judge.

This day comes the United States by the United States Attorney come also the defendants by their counsel and the Court being fully advised it is

Ordered that the motion of the Government heretofore filed herein for a severance and separate trial as to the defendant Joseph T. Marzec be and the same is hereby granted and thereupon the defendant Stanley T. Kusper by his counsel moves for a severance and separate trial and the Court being fully advised it is

Further Ordered that said motion be and it hereby is granted and it is

Further Ordered that the defendant Joseph T. Marzec shall be tried first, defendant Frank A. Brandt, second, and the defendant Stanley T. Kusper, third, and it is

Further Ordered that the Government shall file its bill of particulars on January 25, 1957.

167 IN THE UNITED STATES DISTRICT COURT.
* * (Caption—55-Cr.—679) * *

MOTIONS OF DEFENDANT JOSEPH T. MARZEC TO VACATE ORDER ENTERED JANUARY 23, 1957, SETTING HIS TRIAL FOR FEBRUARY 4, 1957, BEFORE THE TRIAL OF THE CO-DEFENDANTS AND FOR CONTINUANCE AND OTHER RELIEF AND AFFIDAVITS AND BRIEF IN SUPPORT OF SAID MOTIONS.

(Filed Jan. 29, 1957. Roy H. Johnson, Clerk.)

Joseph A. Struett,
Attorney for Joseph T. Marzec,
105 West Madison Street,
Chicago 2, Illinois,
FRanklin 2-0665.

168 IN THE UNITED STATES DISTRICT COURT.
* * (Caption—55-Cr.—679) * *

MOTION OF DEFENDANT MARZEC TO VACATE ORDER ENTERED JANUARY 23, 1957, SETTING HIS TRIAL FOR FEBRUARY 4, 1957, BEFORE THE TRIAL OF THE CO-DEFENDANTS.

Now comes Joseph T. Marzec, by his attorney, Joseph A. Struett, and moves to vacate this Court's order entered on the Government's motion on January 23, 1957, setting his trial for February 4, 1957, before the trial of the Co-defendants in said cause, and as grounds for this motion states that this Court (as shown by the official transcript of proceedings on the Government's said motion, a certified copy of which official transcript is marked Exhibit A, at-

tached hereto, and incorporated herein by reference) failed and refused to follow the rules governing this Court concerning the practice on said motions, and failed and
169 refused to allow this defendant's objections and answer to the Government's motion to be filed, heard and considered in due course, as provided in said motion practice, which objections and answer to the Government's motion are as follows:

1. Defendant objects to said Government motion (a) for failure by the Government to give him timely advance notice of the filing and presentation of said motion as required pursuant to Rule 6 of the Criminal Rules adopted by this Court in this District, Rule 6(a) and (d), and Rule 83 of the Rules of Civil Procedure for the United States District Courts and Rule 12(b) and 13 of the Rules of Civil Procedure adopted by this Court in this District, requiring five days' advance notice to be served upon this defendant, exclusive of the day of mailing of said notice, and exclusive of the intervening Sunday; (b) for failure to file said notice of the Government's motion and any supporting affidavits with the Clerk of this Court at least two days before return day, as required by Rule 3(b) of the Criminal Rules adopted by this Court in this District; and (c) for failure to support the factual allegations in the Government's said motion by filing appropriate affidavits as required pursuant to Rule 6 of said Criminal Rules adopted by this Court in this District, Rule 6(d) of the Federal Rules of Civil Procedure, and Rule 12(c) of the Rules of Civil Procedure adopted by this Court in this District, and other pertinent authority.

2. Defendant objects to the Government's motion insofar as said motion seeks to sever his case from that of the other defendants for the purpose of putting him to trial prior to the other defendants, on the ground that said motion is designed, contrary to law and equity, to

deprive defendant of his rights to executive clemency and a dismissal of the pending indictment against him for his cooperation with the Government, including his testi-
170 mony against other defendants, and his right to a post-ponement of trial pending the granting of such executive clemency and dismissal aforesaid.

3. Answering the Government's said motion, defendant denies the implication contained in the last sentence of paragraph 2 to the effect that it was not until January 14, 1957, that the United States Attorney was advised by Mr. Struett that defendant Marzec would not be available to testify on behalf of the Government while joined for trial with the other defendants, and denies the further implication to the effect that defendant Marzec would testify on behalf of the Government so long as his case was severed for trial from that of the other defendants even though put to trial before the other defendants, and states that the United States Attorney knew, at all times since January, 1956, defendant Marzec's position that he would fully and freely testify for the Government against the other defendants but only if his case were severed for trial from the other defendants far enough in advance of trial to permit the other defendants to make adequate preparations in the light of his proposed testimony and only if the other defendants would be put to trial before him, and that he would not lend himself to any arrangement to surprise the other defendants.

Defendant further states that he has been and still is ready, willing and able to testify fully and freely on behalf of the Government as against his co-defendants under the circumstances as aforesaid.

Defendant further states that the representations made by the Assistant United States Attorney upon presentation of the Government's motion, as set forth in Exhibit A hereto attached, are not true and correct in that there

was an agreement on behalf of defendant with the United States Attorney in fact as well as in law whereby de-
171 fendant Marzec's co-operation, including his full and free testimony, would be extended to the Government as against the other persons who have been indicted herein, upon the understanding that defendant Marzec would have the customary and legal right to executive clemency and the dismissal of the indictment against him as soon as the cases against the other defendants are disposed of, necessitating the postponement of his case including the dismissal thereof until after the other cases had been heard and disposed of. Defendant further states that in pursuance of and in reliance upon said agreement on behalf of this defendant with the United States Attorney, this defendant, through his counsel, was called upon by the Government for assistance and co-operation from time to time, in obtaining and furnishing information valuable to the prosecution of the other defendants, and this defendant, through his counsel, did fully and freely obtain and furnish such information as requested.

4. Further answering the Government's motion with reference to paragraph 3 thereof, defendant denies the implication that there is and has been a question of the availability of this defendant to testify on behalf of the Government against the co-defendants, and states that he is informed and believes, and upon such information and belief, states the facts to be, that the Government could not prove its case against the co-defendants without defendant Marzec's testimony (as indicated by the Government's answer to defendant's previous motion for severance, which was allowed to stand as its bill of particulars), and that the defenses of the co-defendants were antagonistic to the position of this defendant, making their joint trial with this defendant impossible in law, and that "ab-

sent the testimony of Joseph Marzec as to the remaining defendants," the Government, contrary to the implication in said paragraph 3, could not prove a case against the co-defendants.

172 5. Further answering the Government's motion, denies the conclusions and opinions expressed in paragraph 4 thereof and demands strict proof of the factual basis, if any, in support thereof.

Defendant further states that the implication therein, to the effect that the recent plea of guilty of defendant Sobieraj and his availability as a witness against the other defendants may create a sufficiency of proof against the other defendants without the testimony of this defendant, is incorrect, and that in truth and in fact, the status and availability of defendant Sobieraj as a witness against the other defendants in no way justifies the Government's admittedly drastic change of position and its said motion, herein complained of.

6. Further answering the Government's said motion, with respect to paragraph 5 hereof, defendant states that said motion has been filed in bad faith insofar as the Government avows its purpose to be, as more fully appears from the said motion and Exhibit A hereto attached, to put defendant Marzec to trial and to do so first, before the other defendants are put to trial, and to compel his testimony against the other defendants by subpoena and court process, and to disclaim any obligation to defendant Marzec with reference to his right to have executive clemency and to dismiss the pending indictment against him, contrary to the agreement in fact and in law on behalf of said defendant Marzec with the United States Attorney, as set forth above.

7. Further answering and objecting to the Government's said motion, defendant states that the Govern-

ment's concededly drastic change of position in attempting to disavow its obligations to Marzec, as aforesaid, and to force him to trial, and to do so before the trial of the other defendants, is grossly prejudicial to this
173 defendant and contrary to law, equity and good conscience, and takes defense counsel by surprise, without adequate time in which to recast his defense and prepare and present pretrial motions necessary if he is to go to trial, and to prepare and present evidence at such trial, all as more fully appears from this defendant's motion for continuance and for other relief, as hereinafter set forth.

All of the foregoing objections and answer are supported by the affidavits contained in the brief filed in support of this and the following motions. For convenience the transcript of the proceedings of January 23, 1957, Exhibit A, appears after said brief.

Joseph A. Struett,
Attorney for Defendant Joseph T. Marzec.

174 Motion of Defendant Marzec for Continuance and Other Relief.

Now comes defendant, Joseph T. Marzec, by Joseph A. Struett, his attorney, and moves for a continuance and postponement of the time of trial of this defendant to a date following the disposition of the cases against the other defendants herein, and until action is taken by the Government to accord to this defendant his right to executive clemency and has moved for a dismissal of the indictment against him, on the basis of the agreement on behalf of this defendant with the United States Attorney, as set forth in the foregoing motion, and in the light of the affidavits

set forth in the brief filed in support of this and the foregoing motion, and moves for such other and further relief as this Court may deem proper under the circumstances of this case.

In the event that the foregoing motion of this defendant, set forth immediately above, is denied, defendant moves for a continuance and postponement of the trial of his case from February 4, 1957, to a date in the September 1957 term of this Court, and in support of this motion, states that the Government's concededly sudden and drastic change of position in disavowing its obligations to this defendant under its agreement, as aforesaid, and in putting him to trial, and in doing so first, before the trial of other defendants, has taken this defendant's counsel by surprise, without adequate time to recast and develop a defense and prepare and present pre-trial motions necessary if he is to go to trial, and to prepare and present evidence at such trial, none of which work and preparation was contemplated or performed while said agree-
175 ment with the United States Attorney appeared to be honored by him; and further states that, as this Court and the Government were informed in September, 1956, this defendant's counsel had made arrangements to go on a world cruise between March 15 and July 1, 1957; that it would be impossible for this defendant's counsel to make adequate preparation for trial of this defendant's case and to conduct a trial of said case before he leaves on said trip, in view of the necessity of disposing of his other matters, engagements and affairs, and this defendant's counsel would be forced to attempt to withdraw from said case unless a continuance and postponement of trial is granted to a date not earlier than the September, 1957, term of this Court.

All of the foregoing facts are supported by the affidavits contained in the brief filed in support of this and the foregoing motions.

Respectfully submitted,
Joseph A. Struett,
Attorney for Defendant Joseph T. Marzec,
105 West Madison Street,
Chicago 3, Illinois,
FRanklin 2-0665.

176 Affidavits and Brief in Support of Motions of Defendant Joseph T. Marzec.

May It Please the Court:

Now comes Joseph T. Marzec, one of the Defendants herein, by his attorney, Joseph A. Struett and respectfully requests this Court to dispose of his various motions filed herein, consistent with the verified facts, thoughts, and law herein set forth. In addition, this Defendant respectfully requests that he be granted such further and additional relief as may be prayed for herein and/or as this Court may deem proper.

Foreword.

"Drastically" shifting his position, the United States Attorney would now grant this Defendant a severance; try him first; then proceed with the trial of the remaining Defendants using his required available testimony as against them. It is unfortunate that this Court on the eve of trial has to be burdened with the problems precipitated by the present motion of the United States Attorney. It is not our fault. It is equally unfortunate the United States Attorney did not frankly a year ago, advise this Court that he intended to use this Defendant as a witness against the

other Defendants—when he well knew that he could not make out a case against them without the testimony of this Defendant—and refused to agree to our motion for a severance—as he was duty bound to do under Rule 14 of the Rules of Criminal Procedure and decided cases. And, he would misrepresent to the Court on January 23, 1957 that Mr. Struett "has now advised us that he 177 (Marzec) will not be available to testify for the Government so long as he remains joined to the other defendants." He knew it continuously since January of 1956 and was repeatedly so advised. We then, not now, begged him to so do in fairness to this Court, the other Defendants and this Defendant. And that was what precipitated our motion for a severance in January of 1956, which he opposed. Had he so acted the severance would have been granted. These other Defendants would have been put to trial—if they stood trial this Defendant would have testified against them—and then this Court in an orderly manner could have taken up the problems presented in this Defendant's case and disposed of them. Instead on the eve of trial the United States Attorney, most unfairly, as a surprise move, completely shifts his position after misleading Defendant's counsel and attempts to force this Defendant to trial on February 4, 1957. All designed to force this Defendant to plead guilty and to deprive him of most substantial rights, which have already accrued to him.

It is the firm position of this Defendant that he has acquired most substantial rights herein which requires the United States Attorney to proceed no further with this case against him, to dismiss this case as to him or aid him in obtaining executive clemency, to which he is entitled as a matter of law and which rights include the right of this Defendant to have this Court continue this case against him until he is relieved of said indictment by ac-

tions of the Executive Department of our Government—all as should appear from the facts and law herein.

It is not the intention of this Defendant to waive any of such substantial rights so acquired by anything which may be said or appear herein or which may subsequently occur in this case—or any motions which may be made
178 herein—and none of his acts, statements, motions, etc., or those of his attorney appearing herein are to be so construed. All further action on his behalf which may be taken herein is taken reserving to him these substantial rights so acquired—and not in derogation thereof or in waiver thereof. All future action which the Government may take against him herein—and any orders which may be entered herein against him are all objected to on the ground that they are in violation of said substantial rights as aforesaid. To illustrate, there appears herein a motion of this Defendant that the case against him be continued until fall most briefly because of the "surprise" tactics of the United States Attorney, his lulling this Defendant's counsel into a false sense of security—and the fact that Defendant's counsel cannot adequately prepare for trial on February 4, 1957 and will be on a world cruise from approximately March 20, 1957 to July 1, 1957. None of these matters are intended to be a waiver of this Defendant's substantial rights or construed as such. And accordingly, this Defendant respectfully requests this Court to enter an appropriate order to fully and adequately protect this Defendant and his substantial rights as aforesaid which said order as so suggested should contain a provision that all subsequent acts of the United States Attorney herein or orders herein—other than an order continuing this case, awaiting dismissal or executive clemency, or an order of dismissal—are all objected to by this Defendant on the grounds that the United States Attorney has no right to proceed further and that in doing so he is violating De-

fendant's substantial rights as aforesaid and that said objection need not be repeated as any of said acts or orders take place in the future.

179 I.

The Facts.

The Polish Roman Catholic Union, referred to herein as the "Union", is a fraternal life insurance organization with its principal office located at 984 Milwaukee Avenue, Chicago, Illinois. Since 1941, the Union had, as accumulated reserves, funds available which it invested in first mortgages on improved real estate, such as apartment buildings, stores, and small homes, in and about Chicago. As here pertinent, these investments were made through approximately twelve different real estate brokers who received from the Union one per cent of the face value of said mortgages for procuring said loans.

This Defendant entered the employ of the Union in 1937. Since that time his primary duties have been that of an accountant and bookkeeper, keeping track of mortgage and insurance accounts, making collections thereon, and enforcing collections against delinquents. In addition, he later procured a real estate broker's license and he also procured an insurance broker's license, and as a side line, he has engaged in these businesses.

This Defendant did not determine what brokers should be entitled to these real estate loans, the individuals who should be given these mortgages, the amount to be loaned on particular parcels of real estate, the value of the parcels of real estate to adequately secure these mortgages, and the legal aspects and consequences of such mortgage loans. Rather, that determination rested primarily with the other Defendants herein.

Most generally, the Defendant Brandt during the times mentioned in said indictment, was the Treasurer of said

Union, a member of its Executive Committee, and had only the overall general supervision of all loans. Under 180 the laws of the State of Illinois, no loan could be made by the Union except upon an independent appraisal of the securing property by a recognized "independent" appraiser. The Defendant Sobieraj from 1941 to 1953 was that independent appraiser. The Defendant Kusper was the attorney for said Union and was charged with the responsibility of all legal aspects and consequences arising out of said real estate mortgages. Thus, speaking most generally, before said Union could or would make any loans as aforesaid, that loan required the separate and collective determination of these other three Defendants.

Most generally, the brokers who secured these first mortgage loans from said Union for themselves or their clients, paid a commission from three to five per cent of the face value of said mortgage to a real estate broker designated by these other Defendants, and particularly the Defendant Brandt. During the time specified in this indictment, this Defendant was such broker and received such commissions as aforesaid from said real estate brokers acting as the collector for same. Again, most generally, this Defendant in turn, with some variations, paid over one-fourth of the amount of said commissions so received by him to each of the other three Defendants, retaining one-fourth for himself for his services as collector as aforesaid. Sometimes certain Defendants received less than their one-fourth share, and again some Defendants did not receive any, but the overall picture was substantially as above.

Some of these brokers paid these commissions to this Defendant by way of checks, payable to his order. As to these amounts, he usually paid the Defendants Kusper and Sobieraj their determined shares by checks payable either to them or to such persons whom they might designate. It is this defendant's understanding that these two other

defendants may well have reported said amounts in
181 their income tax returns. Other brokers drew checks payable to cash for these commissions and sometimes paid this Defendant in cash or this Defendant collected the proceeds of said checks. Other brokers paid this Defendant these commissions in cash. As to these particular "cash" commissions, that is, those received by this Defendin cash, or the proceeds of "cash" checks, the distribution thereof by this Defendant to the other Defendants of their proportionate share was also made secretly to them and each of them in cash outside the presence of any other person. As to the Defendant Brandt, his share of all of these commissions was at all times paid to him secretly in cash, irrespective of how they were paid to this Defendant, either by check or cash.

Most generally, with some qualifications, neither this Defendant nor the other Defendants (as this Defendant has been informed and believes) picked up in their income tax returns or reported their respective shares of the "cash" commissions which were paid to this Defendant in cash, and generally three-forths of which was passed on to the other Defendants in cash as aforesaid. This in the main is the subject matter of the above cause of action.

This Defendant represents to this Court that while the Government may well have much evidence furnishing a strong suspicion that these facts are true, it may safely be said and it would appear obvious that the Government is unable to specifically trace these monies (cash) to the other Defendants herein without the benefit and aid of this Defendant, and that, therefore, unless this Defendant testifies for the Government as against each and all of his co-defendants the Government case against them would fail.

As this Court well knows, the embryo and very foundation of any income tax prosecution is an investigation with-

in the Bureau of Internal Revenue (now known as the
182 Internal Revenue Service, but referred to herein as the "Bureau"). As such investigation progresses or is completed, a determination is made within the Bureau as to which sanctions, civil and criminal, of our Revenue laws should be applied against a particular taxpayer and his case. If it is determined to apply the criminal sanctions, then the Bureau, before effecting a civil disposition of that case, refers the case to the Department of Justice with its, the Bureau's recommendation of prosecution. Basically unless the Bureau forwards the case of a particular taxpayer to Justice Department, with its prosecution recommendation that case is never presented; it never reaches Justice but is settled civilly within the Bureau—and Justice prosecutes only such taxpayers whose cases are referred to it as aforesaid. Thus the Bureau can stifle the prosecution of the case of any taxpayer. The Justice Department, in turn,—as to cases it receives from the Bureau with its prosecution recommendation—if it approves the Bureau's recommendation, forwards the case to the United States Attorney for presentation to a Grand Jury.

Here, the Bureau, after "investigation", if it could be called an investigation, forwarded this case to the Justice Department, charging all of these commissions as income against this Defendant and recommending only the prosecution of this Defendant. In this file, as this Defendant has been informed and believes, were Affidavits of the other Defendants of substantial effect that they had in no way participated in these (cash) commissions. It is Defendant's best recollection that the investigating agents never asked him if he ever shared these commissions with anyone and even though they knew he was sharing at least some commissions with at least two of the other Defendants. It is sufficient to here state that it was and is the opinion of this Defendant and his counsel that much chi-

canery and skullduggery went on behind the scenes
183 during the course of this investigation, which resulted in the Bureau's recommendation as made. The United States Attorney long ago was given most of the facts supporting this statement, and it would appear that the United States Attorney has now uncovered additional facts. All these facts can be assembled and presented to this Court, if it so desires.

This Defendant is certainly not without culpability in this matter. Once this case reached the office of the United States Attorney, this Defendant employed new counsel, if he ever before had counsel of his own choice to properly advise him. He then brought to the attention of the United States Attorney the fact that he was willing under proper circumstances to admit his own culpability but that there were other persons involved whose even greater guilt might well have been stifled within the Bureau; that he alone was in a position as an accomplice to furnish information and testimony which would be required to cause the indictment and successful prosecution of such other persons; and that if the United States Attorney desired his assistance, cooperation and testimony for such purpose, he offered to make such assistance, cooperation and testimony available to him. The United States Attorney indicated he was willing to avail himself and did avail himself of said offer and procured from defendant Marzec or his counsel detailed information, grand jury testimony and other requested cooperation at all stages thereafter, bringing about the indictment of the other defendants and making possible the successful prosecution of said defendants, one of whom has already, by virtue of such cooperation and the availability of Marzec's testimony, pleaded guilty. This Defendant has to date incurred much expense by way of fees for his counsel and accountant—and given much of his time in working with them in assembling facts and

184 information given to the United States Attorney as aforesaid. It took months to get together some of the facts given the United States Attorney. And, he would put him to the additional expenses of a trial.

When this Defendant went to the United States Attorney with many facts indicating that there was something radically wrong with the Bureau's recommendation that he alone be prosecuted and the United States Attorney accepted those facts and as far back as 1955, made use of them, and this defendant's testimony, they then and there pooled their resources all to make certain that substantial justice was done in this case. And the United States Attorney would say to this Court on January 23, 1957, "There has been no deal made with him (Marzec.)" And he would say Marzec appeared before the Grand Jury "at his own request." He did not get in there without the knowledge and consent of the United States Attorney and for the purpose as aforesaid. Most generally it was the United States Attorney and Mr. Marzec on one side and the Bureau and these other defendants on the other side. The United States Attorney should be required to give this Court the details. In fact they became engaged in a "joint venture" each with fixed duties and obligations to the other and each had certain duties to perform. They then and there had an agreement in "fact and law" with all its legal consequences. All that remained was to work out the mechanics of their understanding to effectuate the object of their agreement. They did not have to sit down and spell out its terms, purposes, and consequences nor execute the agreement under seal. The facts and law made the "deal" between them. Out of this joinder of effort—however it be termed; and whether it be considered express or implied; there emerged as an integral part thereof the Defendant's right to immunity herein, dismissal, provided

he fully performed his part of the bargain. This is
185 just common sense, basic fairness, the decency of due process and fair play. *United States* v. *Morgan*, 304 U. S. 1.

This defendant would fully perform. The United States Attorney would breach.

This Defendant's obligation to the United States Attorney, most certainly, from the very beginning, included the duty to fully cooperate with him in connection with the trial of this case, furnished him with possible information he desired that could be furnished, and to come forward and fully and freely testify against these other Defendants if the United States Attorney so desired or required. He and his counsel have at all times recognized that obligation, have never quibbled over it, and as of this date have done everything sought or required of them. In full recognition of his obligation as aforesaid Defendant represents to this Court, and assures the Court that even if it should permit this Defendant to be tried first and, whether he is convicted or acquitted, he will still recognize and perform all his obligation as aforesaid; more specifically he will testify against these co-defendants if his testimony is required. This should end the Government's professed "fairness" to Mr. Struett as it appears in the proceedings of January 23, 1957. When Mr. Struett makes any agreement on behalf of a client—he makes certain that that client fully performs or that client gets another lawyer. With the greatest deference to the United States Attorney, this Defendant and his counsel do not believe that obligation includes the duty to plead guilty—or to waive any of his substantial rights herein.

The United States Attorney's obligation to this Defendant most certainly included the duty to dispose of this Defendant's case fairly and equitably and consistent with

established procedures and recognized legal author-
186 ity. And, most specifically, if he availed himself of Defendants' side of the bargain—and Defendant performed to the best of his ability—to dismiss. He has consistently refused to recognize his duties and obligations to this Defendant; has quibbled about them; has sought to take unfair advantages of this Defendant and now admittedly, would deprive him of the substantial rights given him under the law.

The United States Attorney in his recent motion and again in open court on January 23 implies that he now has available to him much additional evidence and could convict these other defendants "absent the testimony of Marzec"—though he would still try Marzec first then compel him by process to appear and testify against the others. Presuming his implication be true, which we may doubt, the fact still remains that whatever evidence he may now have, its very source and foundation, has to be the prior cooperation, information and testimony of Marzec. Should the United States Attorney deny this representation and statement he should be required by this Court to forthwith disclose—just what information and evidence he had against these other Defendants before his "deal" with Marzec. It would be a bit disgusting if he is now attempting to squirm out of the "deal" because he now no longer requires Marzec's testimony and cooperation. His conduct would be even worse if he is now so acting believing that he will obtain pleas of guilty from all these other Defendants. Having received the full benefit of his "deal" with Marzec he would now deny it. His own success herein condemns and destroys his every denial and his every action against this Defendant. He should be required to fully perform his part of the deal—to dismiss—. It is most respectfully submitted that this Court should continue this Defendant's case until the United States Attorney does dismiss.

187 All this Defendant who has "fully performed" has ever asked is that since his testimony would be antagonistic to the rights of the other Defendants, that he be granted a severance as required by law; that his testimony, if used against the other Defendants, be used under circumstances that would be fair to them; and that if he conducts himself as aforesaid and fully and freely testifies on behalf of the Government and against his co-defendants, the cause of action against him be then disposed of consistent with the utterances of the Supreme Court of the United States and its lower courts. This Defendant has resisted and will continue to resist the efforts of the United States Attorney, through pressures of his powerful position, to exact from him any action or considerations which may be inconsistent with such utterances. More specifically, contrary to the utterances of our Supreme Court, the United States Attorney here desires and has desired that this Defendant first plead guilty and then give required testimony, as a "last minute witness", against his co-defendants. He would now attempt to compel this Defendant to do so by forcing this Defendant to trial first. Seemingly, he would place the cart before the horse. In any event, such is not the orderly and lawful procedure contemplated by the Supreme Court.

II.

Motion that this Defendant be Granted a Severance Consistent with Rule 14 of the Federal Rules of Criminal Procedure.

This motion was a real "surprise." The question now being decided, the discussion herein is to emphasize how drastically the United States Attorney shifted his position—and how he now would take advantage thereof to the unconscionable detriment of this Defendant. As this Court

no doubt recalls, when the above case, over a year ago, 188 first came up for hearing before this Court, this Defendant made this very motion, pointing out that his position in this case was antagonistic to the other Defendants and that the facts were known to the Government. Under these facts, seemingly such a severance was required under **Rule 14.** For some unknown reason, the United States Attorney opposed that motion, giving to this Court but part of the facts and perhaps not the controlling ones. In fact the United States Attorney implied to this Court that his case against these other Defendants did not "rest completely" on the testimony of this Defendant (his own pleading would seemingly indicate otherwise) and that while Marzec "might" testify for the government that was "his (Marzec's) problem." This Court then denied said motion for a severance and similar motions of the other Defendants, all on the urgings of the United States Attorney.

Since that time, the attorney for this Defendant has persistently and consistently, even as late as January 14, 1957, urged upon the United States Attorney that this Court when it denied said motion may well have not been given the controlling facts, that it might well be reversible error to try these Defendants together, as emphasized by certain cases which were furnished to the United States Attorney, and requested and urged the United States Attorney to either prepare and present a motion seeking such a severance, or to join in with this Defendant to obtain such a severance. His requests and urgings were rejected. Defendant's counsel was but attempting to point out to the United States Attorney the legal errors in his action and thinking and prevent him from engaging in an abortive trial. He was standing in his own way! The United States Attorney continuously insisted from January of 1956 up to and including January 18 of 1957, that he de-

sired to try all the Defendants together, that he could
189 not grant this Defendant a severance, that he did not want two trials, and the interests of justice would be best served by trying all of them together. Defendant's counsel was just mystified.

To excuse and justify his complete shifting of position and his most tardy presentation (practically on the eve of trial) of his motion for a severance, the United States Attorney would, in paragraph 2 thereof, misrepresent, at least by inference, that Defendant's counsel, after repeatedly assuring him that this Defendant would be available to testify against the other Defendants, then, for the first time, on January 14, 1957, advised him that this Defendant would not testify unless he were granted a severance. In fairness to this Court and all parties, he should have disclosed to this Court that he was advised that this Defendant would not testify against his Co-defendants unless granted a severance even prior to the time that this Defendant presented his own Motion for a Severance, January of 1956, and continuously thereafter. Yet on January 23, 1957 the United States Attorney made the following misrepresentation to this Court:

> "The United States Attorney has been under the impression that the defendant Marzec would be available to testify for the government in this case even though he was (joined as) a defendant. However Mr. Struett has now advised us that he will not be available to testify for the government so long as he remains joined to the other defendants for trial." (Par. Sup., meaning obvious.)

This mispresentation of the true facts appears of like effect in his motion as above. In combination he misrepresents to this Court that Defendant's counsel repeatedly assured him that this Defendant would be a witness against these other defendants even if he remained joined with

them and that it was not until January 14, 1957 that 190 Defendants' counsel advised him that this Defendant would not testify against the others unless granted a severance. Thus as an excuse and justification for his inexcusable motion, drastic shift of position and action, he would misrepresent that this Defendant's counsel had continuously misled him and that he was caught by surprise on January 14, 1957—and that Defendant's counsel had shifted his position. His entire conduct as here developed is refuted by this Defendant's motion for a severance filed in January of 1956.

He would offer as an additional excuse or "main" reason, the fact that the Defendant Sobieraj pleaded guilty. This fact has not the semblance of relation to the facts and issues here presented. Had the United States Attorney during the summer of 1956 "followed through" on the then given cooperation of this Defendant and his counsel, he could well have disposed of this case last September. He should be required to give this Court the facts if he persists in attempting to escape his just obligation.

Defendant's counsel repeatedly advised the United States Attorney that he felt that the United States Attorney was duty bound to forthrightly disclose and make most clear to this Court and to the other Defendants the status of this Defendant in this litigation; that is that he was to be a witness for the Government against his Co-defendants and that he, Defendant's counsel, would insist that counsel for the other Defendants be so advised far enough in advance of the trial so that they would have ample opportunity and time to prepare their defense on that basis.

For over a year, Defendant's counsel has persistently and consistently advised the United States Attorney that if he expected this Defendant to be a "bona fide" Defendant with these other Defendants and then on the eve of the trial or even after the trial commenced to come for-

ward and plead guilty or ask for or agree to a sever-
191 ance and then voluntarily testify on behalf of the Government, all to lead the other Defendants into a false sense of security or to "catch the other Defendants by surprise," he would not be a party to any such arrangement, expressed or implied. That this was really what the United States Attorney desired should be confirmed by other counsel in this case. He, a long time ago, advised them in substance "That once the trial of this case commenced there was nothing to stop Marzec from pleading guilty and coming over to the 'other side of the table.'" A most plain admission of the "deal" which they denied on January 23, 1957. In view of the representations made by the United States Attorney to this Court in January of 1956, such contemplated action could only result in reversible error. The real reason why he continuously was so insistent that this Defendant appear as a "bona fide" Defendant with the other Defendants and then at the trial come forward as a "voluntary" witness under Section 3481, Title 18, may be inferred from his remarks on January 23. He may have intended that this Defendant thereby waive his substantial rights to a dismissal of this case.

The United States Attorney was consistently during the last year, advised that if he insisted on trying these Defendants together, it would most probably be reversible error, and that this Defendant in fairness to the other Defendants would have no alternative but to stand trial with them, see the trial through, and would not under any circumstances be available as a "last minute" witness against the other Defendants. Not only were these attitudes of Defendant's counsel repeatedly made most clear to the United States Attorney, but he also advised all counsel for these other Defendants of them and what he had told the United States Attorney, as all of them should confirm. This Court

is well aware of the utterances of the late Justice
192 Evan Evans in his dissenting opinion in the Johnson case, as to "catch-as-catch-can" methods in criminal cases.

The United States Attorney continuously from January of 1956 up to and including January 14, 1957, was fully aware of the attitudes of this Defendant and this counsel. The United States Attorney, during all this period, equally recognized and conceded time and time again to Defendant's counsel that it was exceedingly questionable whether he could make out a case against these other Defendants unless this Defendant did so testify for the Government. Yet, he persisted in insisting that he was going to try all of them together. This did not make sense to Defendant's counsel and never did, and he repeatedly so told the United States Attorney. He just could not try all these Defendants together. Basically he could not make out a case against these other Defendants without the testimony of this Defendant. He should have known it as well as did the Defendant's counsel from the very time this indictment was returned and continuously thereafter, even up to the present time. Giving him the benefit of a doubt, and presuming he could make out a prima facie case against all of these Defendants; none of them could make a defense without implicating the other, and more particularly this Defendant's position being antagonistic to that of the other Defendants, his testimony of necessity would most strongly bolster the "prima facie" case against the other Defendants. This is not such a joinder of Defendants as is contemplated by Rule 13 of our Federal Rules of Criminal Procedure, but rather as is condemned by Rule 14. It obviously might well have been reversible error for him to have tried these Defendants together (*U. S.* v. *Haupt*, C. A. 7, 136 F. 2d 661).

As the eve of this trial approached, even as early as

December of 1956, Defendant's counsel ever increasingly pointed out to the United States Attorney this situa-
193 tion and requested information as to just what the Government intended to do—all without avail. He repeatedly admonished the United States Attorney that this Court when it set this case for trial contemplated that it should go to trial; that he couldn't without inviting reversible error proceed as he insisted; that he should rectify his error; and disclose his real intent so that the rights of all Defendants would be adequately protected rather than be prejudiced. And, that otherwise there would be much confusion, misunderstanding and difficulty. What he was really intending to do was disclosed by his motion and admissions in open court on January 23, 1957. Having been frustrated in his efforts to have this Defendant waive his rights to immunity by testifying under Section 3481, and then hoping that he could pressure this Defendant into pleading guilty and have him waive, or deprive him of substantial rights, he intended at the last minute to completely reverse his position, catch this Defendant and his counsel by surprise, move for a severance as to this Defendant, and then ask that this Defendant be tried first on February 4, 1957, well knowing that Defendant's counsel would not expect such action and was not prepared for trial; all magnified by the fact that he, of necessity, knew that Defendant's counsel had for some time been overburdened and pressured in an attempt to get his personal and professional matters in shape to permit him to leave on a World Cruise. Such basically unfair tactics and pressures cannot be too strongly condemned and should not be countenanced by any Court.

The Government's motion, insofar as it relates to a severance for this Defendant, obviously should have been granted a year ago. However, considering this motion as a whole, with its attempt to force this Defendant to trial

first, its reference to Mr. Sobieraj, his plea of guilty, his making evidence available, and the fact that he was
194 to be a witness for the Government, and in the light of the other facts herein, it smacks a bit of administrative pressure to force this Defendant, and probably the others, to plead guilty. Much the same tactics appear in the proceedings of January 23, 1956. This is much the same type of abuse of power which led to the mess in the Goldberg case, 53 CR 158; and resulted in the reversal of the Koplin case. *United States* v. *Koplin* (C A 7), 227 Fed. 2d 80. As would appear from some of the cases cited herein (and in others which have come before this Court of which this Court will take judicial notice) the United States Attorney has been detected in various instances as being a bit reluctant to recognize and protect the rights of a defendant in a criminal case; rather there have been occasions when he is a bit inclined to take unfair advantages of them or their counsel. His actions in this case create the effect of a psychological warfare against defendants to compel them to plead guilty!

III.

The Government's Motion to Proceed to Trial as to This Defendant on February 4, 1957.

This motion really comes as a surprise. Months ago, in either September or October, 1956, the United States Attorney, after again advising this Defendant that he would not agree to a severance, a bit casually stated that even if such a severance were granted, he would then try the Defendant first. Defendant's counsel pointed out to him that while this was his prerogative, such a procedure was neither practical, feasible, or legal and seemingly he recognized that fact. It was also emphasized to him that it would cause great inconvenience

to Defendant's counsel who would have to spend considerable time in preparing motions which had not been filed and in preparing for trial, if this Court required him to
195 go to trial, and particularly so since he was attempting to arrange his personal and professional affairs to leave Chicago about March 20, 1957 to be gone until July. And, that if this was really his intention, he should make the motion forthwith so Defendant's counsel would know where he stood could prepare and present adequate motions, and would have ample time to prepare for trial if required. Instead, he persisted in asserting that he would not agree to such a severance and insisted he was going to try all these defendants together well knowing he could not legally do so.

From at least October of 1956, up to and including the date of his present motion, the U. S. Attorney never once again mentioned the fact that he would ask for a severance and that as a part thereof he intended to force his Defendant to trial first, all the time knowing that Defendant's counsel was having much difficulty getting his various personal and professional affairs in shape to leave on a World Cruise on or about April 1, 1957. Instead he persisted in his position as aforesaid. He would thus lull this Defendant and his counsel into a false sense of security. During all this same period, he was urging this Defendant to plead guilty before testifying for the Government, and was ever increasingly and more strongly advised that this Defendant would not so do, all as far back as a year ago, and up to and including the very date of his motion (Friday, January 18, 1957).

During the last several months, Defendant's counsel repeatedly stressed to the United States Attorney that in view of his contemplated cruise and the difficulties of getting all his affairs in shape he had to know what the Government intended to do on February 4, 1957, so that

the rights of this Defendant could be adequately protected and so that this Defendant and his counsel would not be caught by any "surprise tactics" of the Govern-
196 ment. Confronted with much procrastination, Defendant's counsel finally, at about 2:00 p.m. on January 18, 1957, advised the United States Attorney that since he could not make up his mind or would not tell, he, Defendant's counsel, had no alternative but to present the matter to this Court and request this Court to compel him to make his position clear so that all counsel would know what to expect and how to proceed, and that he would immediately prepare the necessary documents. Apparently only then did the United States Attorney prepare the present motion. He may have intended to make this motion on February 4, 1957, the date of the trial.

IV.

Defendant's Substantial Rights Herein.

A defendant when called upon to testify as against his co-defendants acquires certain additional and greater rights than other Defendants. In the Whiskey cases, 99 U. S. 594, 25 L. Ed. 399, the Supreme Court of the United States states:

> "Accomplices in guilt, not previously convicted of an infamous crime, when separately tried are competent witnesses for or against each other; and the universal usage is that such a party if called and examined by the public prosecutor on the trial of his associates in guilt, will not be prosecuted for the same offense provided it appears that he acted in good faith and that he testified fully and fairly."

In the case of *United States* v. *Lee*, 4 McLean 103, Judge McLean said:

> "An accomplice is used by the government because

his evidence is necessary to a conviction. Being called as a witness there is an implied obligation by the government, if not expressed, that if the witness shall make a full and honest disclosure of the facts which
197 have a direct bearing on the case he shall not be prosecuted. * * * In the case of Lee, he was used as a witness with the understanding that he would not be prosecuted to conviction, provided he made a full disclosure in regard to the acts of Warner. The court have heard his evidence and there seems to be no doubt that the disclosures made by the witness were true. He implicated himself, being the driver of the mail stage, but he was instigated to do the act by Warner, who was a much older and more experienced person. The court think Lee as a witness has acted in good faith and that the acquittal of Warner by the jury in no respect affects the right of the witness to claim an exemption. The government is bound in honor, under the circumstances, to carry out the understanding or arrangement by which the witness testified, and admitted, in so doing, his own turpitude. Public policy and the great ends of justice require this of the court. If the district attorney shall fail to enter a nolle prosequi on the indictment against Lee the court will continue the cause until application can be made for a pardon. The court would suggest that to discontinue the prosecution is the shorter and better mode."

In the case of *Russell* v. *U. S.* (C. A. 6), 12 Fed. (2d) 683 the court said (page 688, note 6):

"Independently of statute, the universal usage is that an accomplice, if called and examined by the public prosecutor on the trial of his associates in guilt will not be prosecuted for the same offense, provided it appears that he acted in good faith and that he testified fully and fairly. The rule is that the witness thereby obtains an equitable right to a pardon; and while he cannot by law plead such facts in bar of an indictment against him, nor avail himself upon his trial of his equitable right to a pardon, such right will

be respected to the extent of giving opportunity for such application, even by postponing the trial, if necessary, for that purpose. Whisky Cases, 99 U. S. 594, 25 L. Ed. 399; *United States* v. *Lee*, Fed. Cas. No. 15,588, 4 McLean 103."

198 As Defendant's counsel would interpret these cases, they seemingly recognize that if an accomplice is used by the Government because his evidence is necessary to a conviction of other defendants, and he fully and freely testifies as to the facts, there is an implied agreement by the Government that he will not be prosecuted. This theory of the law is but consistent with the theory expressed by rather numerous "immunity statutes" applying to certain other Federal offenses.

Recognizing such a Defendant acquires such a right, it is equally clear from the cases as to how he is to assert that right. His most substantial right as it appears from these cases is to a pardon through the Executive Branch, or more practically a dismissal and a continuance through the Judicial Branch of his case until he has an opportunity to obtain or is given such a pardon or dismissal. In any event the Court will not proceed further with his case until and unless the Executive Branch has discharged its obligation to him.

The motion of the United States Attorney to try this Defendant first on February 4, 1957, is not in good faith, and is a deliberate attempt to deprive this Defendant of his substantial rights and circumvent the utterances of our Supreme Court as aforesaid.

In paragraph 2 of his motion he admits that this Defendant's counsel has repeatedly assured him that this Defendant will be available to testify against these other Defendants. In paragraph 3 of his motion he misrepresents the true facts to this Court by stating only that the Defendant, Joseph T. Marzec, can present valu-

able and direct evidence which "will materially shorten the trial" as to the Defendants Brandt and Kusper. He was duty bound to have disclosed to this Court that his entire case against these Defendants is dependent upon
199 the testimony of Defendant Marzec. In paragraph 5 of his motion, he proposes to this Court that he will be ready for trial against these other two Defendants immediately upon completion of the trial as to the Defendant Marzec, and that he "will call Joseph Marzec as its witness upon such further trial of the Defendants Brandt and Kusper." Thus this United States Attorney unfairly and overzealously proposes to get and admits he proposes to get the full benefit of this Defendant's testimony against these other Defendants and simultaneously would put him to trial first and thus attempt to deprive him of his substantial rights as defined by the United States Supreme Court. (*Cf. Korer* v. *U. S.*, 52 CR 587).

That the United States Attorney has been fully cognizant of this defendant's substantial rights to have this case dismissed is best emphasized by the "legal" gymnastics he has been indulging in to cause this Defendant to waive or lose those rights. He opposed this Defendant's legally sufficient motion for a severance in January of 1956; he then attempted to induce this Defendant to appear as a "bona fide" witness at a joint trial and volunteer to testify under Section 3481 so that he would be held to have waived such immunity. *Johnson* v. *U. S.*, 271 U. S. 494. Frustrated in that effort he then attempted to have this Defendant plead guilty. He continuously sought to confuse Defendant's counsel with his untenable factual and legal positions and refused to frankly state his position to this court or defendant's counsel. Then, on the eve of the trial, well knowing that this defendant's counsel had filed none of the appropriate motions on his client's behalf in preparation for trial and was wholly unprepared for trial, he would

drastically shift his position (he did an about face), insist on a severance and would try him first so that he could call this Defendant "as a witness under subpoena in the trial of the other two defendants in the cause"—"because
200 we wish no confusion in the record as to any possible equitable immunity insofar as we can control it with relation to the defendant Marzec," all done with much misrepresentation of the true facts to this Court and an over-reaching and misleading of this Defendant and his counsel. Thus we have the Goldberg and Korer cases all over again but with different issues and different defendants.

In summary, it is clear beyond argument that without the cooperation, information and testimony offered by this defendant and accepted and availed of by the government, there would have been no possibility of indicting and successfully prosecuting the other defendants. Thus, this defendant has contributed much more than his share of the usual bargain of an accomplice who merely testifies against the other defendants who have already been indicted.

V.

The Insistence of the United States Attorney That This Defendant Plead Guilty.

The United States Attorney would insist upon and would use the pressures of this office to force this Defendant to plead guilty. Of course, he has no such rights and his action to that effect is a most clear abuse of his great powers. The Defendant and his counsel fully recognize that this Defendant is not without culpability. But, that does not mean that he must plead guilty because the United States Attorney insists. Even if it were the case that he had no rights of implied immunity and no sound motions were available to him to dismiss this indictment, yet, under the overall facts of this case, there is much in mitigation

and defense of the acts of this Defendant. It just might be that it is for his best interests to stand trial. This is a matter for him and his attorney to determine at the
201 proper time and after proper motions on his behalf have been prepared, submitted to this Court and disposed of by this Court. All, if the United States Attorney is sincere in his request to put this defendant to trial.

The United States Attorney has no right to urge upon any Defendant that he waive any right which he may have. Should this Defendant enter a plea as the United States Attorney is seemingly determined to exact, then he might waive his substantial rights. (*King* v. *U. S.*, C. A. 8, 203 F. 2d 525.)

The United States Attorney should recognize that had this Defendant hired and been represented by competent counsel of his own choice at the early stages of this investigation, he and his then counsel would have forthwith given to the Bureau investigators (and if they were not interested, to their superiors) the facts and cooperation which much later he and his counsel gave to the United States Attorney. Defendant's counsel represents to this Court that had this procedure been followed, fair minded competent Bureau officials from the very beginning would have considered him, and had to consider him, a required government witness, his prosecution would never have been recommended and he would never have been indicted.*

* For five years, from 1946 to 1951, defendant's counsel was Regional Counsel of the Penal Division of the Bureau of Internal Revenue, Region II, which covered 16 Midwest states. As such Regional Counsel, all cases of all taxpayers of this area proposed for prosecution had to clear his desk and he made the determination as to whether or not the cases of these taxpayers should be cleared into Justice for prosecution or whether they should be sent back for civil settlement. Thus, he can make the above representation to this Court with safety as an expert, having in mind a comparable case which he disposed of consistent with the authorities cited herein.

The United States Attorney on January 23 admitted "In the first instance this case was originally prepared and developed by the Internal Revenue Service as to the defendant Marzec only." This means here that the Bureau "loaded" this case into Justice recommending only
202 the prosecution of Marzec and charged all these commissions to him as taxable income. It is most surprising that before this was done some reviewer within the Bureau did not "catch" what was going on and order further investigation unless much evidence against these other Defendants was suppressed or destroyed during the course of the investigation. The case against this Defendant only should have appeared just too perfect as witness the affidavits of these other Defendants that they had not shared in commissions running into thousands of dollars which were being received by an "employee" of the Union. That this Defendant was then being "framed" would seem conclusive from the facts this Defendant furnished the United States Attorney; the additional facts he admittedly has uncovered; and his own success herein once he accepted this Defendant's offer. Aside from any questions of his duty to dismiss; the United States Attorney, if he would try this Defendant first or last or ever, should first be required to forthwith produce all pertinent evidence now in his possession that this Defendant may well have been "framed" as aforesaid. He should not be permitted to suppress evidence beneficial to a defendant (*Goldberg* v. *United States*, 53 C. R. 158). Accordingly, if the United States Attorney would proceed as indicated it is most respectfully requested that this Defendant is entitled to an order of this Court, and he so moves, that he first produce and make available to this Court and Defendant's counsel all the facts with his possession to establish the fact that this Defendant had been "framed" or admit that fact in open Court. He should know. He would try this Defendant first. He should first produce and disclose.

203 VI.

Defendant's Counsel.

A year ago, when this case first was called by this Court, this Court gave the Defendants ample time to file adequate motions. Recognizing that his client had been and was cooperating with and was a required Government witness against the others, and presuming that the United States Attorney would recognize controlling Supreme Court authority theretofore furnished him, there was no need for this defendant to then file any motions other than a motion for severance, which he filed.

This Court and Government counsel were advised last September that this counsel had made arrangements to go on a World Cruise, leaving around April 1, 1957, leaving Chicago on or about March 20th.

This counsel practices alone. All his work is personal, and it is a most difficult task for him to get his professional and personal matters in shape so that he can leave on an extended tour for a period of four months. He attempted to get these matters in shape as far back as last September. Most of them are Government matters, and for some reason or other, it now appears, as is quite usual, that their disposition has been delayed and they all should be taken care of or require care before he leaves. Unfortunately, the Government's drastic change in this case has already used up the last ten days of this counsel's time, in deferment of other pressing matters. He tried a case in the Tax Court last June, filed his briefs last September, it has not been decided yet, and a decision may be forthcoming any day. If he is successful, there are other matters which must be taken care of immediately, and will take at least a week's time. If unsuccessful, he must get the record ready for the Court of Appeals. Again, another matter
204 lying dormant for several years broke around Christ-

mas time, and now he must prepare a petition to the Tax Court before he leaves. This counsel must prepare and file Income Tax Returns. It is not his purpose to burden this Court with his many other matters, professional and personal, that must be taken care of before he leaves. Should this Court desire more detailed and additional facts they will be supplied.

Defendant's counsel frankly represents and states to this Court that he presently is not prepared to go to trial in this case and has to date made no preparation whatsoever to do so. It is most respectfully submitted that in view of the facts herein set forth he need apologize to no one for this representation and statement.

Defendant's counsel states his firm belief that as a matter of law there exists on behalf of this Defendant a right to be protected from continued prosecution in this case. That even aside from any such question the prosecution of this Defendant in the light of the facts herein is so repulsive to a due and proper administration of justice that such prosecution would be unsuccessful.

Defendant's counsel had a right to assume that once the cases of the other Defendants herein were disposed of, the United States Attorney would at least then frankly state to this Court the true status of and situation as to this Defendant; that this Court would then afford the parties ample time to work out a disposition of Defendant's case satisfactory to this Court, the Government and this Defendant; and that this counsel could impress upon the United States Attorney—or his superiors—their duty to dismiss. From past experiences this Counsel can safely represent to this Court that this may take considerable time. The problem is essentially administrative, as appears from the decisions herein.

205 Defendant's counsel frankly represents to this Court and states that to force this Defendant to trial first —

under the above circumstances without affording a most ample opportunity to most fully prepare any and all motions required to protect his rights herein; without then disposing of said motions in an orderly manner and upon full hearing; and then without affording him and his counsel most ample time to prepare for trial (here not before the fall of 1947) might well constitute reversible error, create an abortive trial, and seemingly would be contrary to the admonishments of our Court of Appeals in the Koplin case.

If this Defendant is to be put to trial as the Government designs, it means that the Government has unfairly and unconscionably taken advantage of this Defendant, lulled him into a false sense of security, and would turn against him all of the information, disclosures, leads and testimony which was received from him. Under these circumstances, there can be no doubt that this counsel would be required to investigate the nature and extent of all information, disclosures, leads and testimony furnished directly and indirectly by this defendant and his counsel with the view of preparing and presenting a full and adequate motion to suppress all such evidence as against this defendant. Cf. *U. S.* v. *Shotwell Mfg. Co.* (C. A. 7), 225 F. (2d) 394. The work of investigating and preparing this motion and other appropriate motions would consume a period of several months and could not be accomplished, and trial held, before this counsel's departure on said trip.

Defendant's counsel represents to this Court and states that the documents prepared herein were prepared under much pressure with a most limited available time—in fact he had to employ other counsel to come to his assistance. It is to be recognized:

1. The alleged conversations with the United
206 States Attorney took place with one or more of his assistants; that they may not have taken place in

just "so many words" but the words as used reflect the substance intent and object of said conversations.

2. That as to time of same, it is his best recollection that these conversations took place in relation to certain specific events—and when their dates are fixed by months—it may be a month earlier or later. There were many conversations leading up to and during the furnishing of this defendant's testimony information and facts extending over a period of at least a year resulting in the indictment of these other Defendants. And again there were many conversations in connection with this defendant's motion for a severance. As to the last series of conversations it is the counsel's best recollection that they commenced perhaps even before September of 1956 and up to January 18, 1957.

3. That this counsel may well have overlooked other facts and issues which may be most beneficial to his client and he reserves the right to assert these other facts and issues at some future date. In addition having been "caught by surprise" he has not been able to give the issues herein such legal research as they may require.

4. As to the motions he should file on this Defendant's behalf; he most certainly should file a rather lengthy motion to dismiss on constitutional grounds of similar purport and effect to the one he filed in the case of *United States* v. *Sam Achilli*, 53 C. R. 154 which motion was denied by the trial court without opinion and to which motion reference is made. Basically it is this Counsel's position that there is a flagrant denial of due process in the administrative procedures which are the very foundation of all these income tax prosecutions. The Bureau operating without regard discernible standards of administration action promiscuously seizes upon the cases of certain taxpayers for prosecution and simultaneously stifles the prosecution of other cases of other
207 taxpayers of greater delinquency and flagrancy, all without the semblance of fairness or equality of treatment. This is a government of men and not of law.

And obviously a denial of due process. Witness what may well have gone on here. Obviously discovery motions should be filed seeking to discover why this Defendant was not from the very beginning of the investigation considered only as a required witness against these others but rather used as a means to stifle their prosecution.

5. This Counsel has done the best he could herein. He has attempted, within a most limited time, to fairly appraise this Court of the status of this Defendant herein—and the issues here involved—and at the same time protect the substantial rights of this Defendant.

This counsel has been informed and believes and upon such information and belief states that the United States Attorney had full personal knowledge of the offer of said Marzec as aforesaid and the circumstances under which he furnished testimony information and cooperation; that he personally insisted that use be made of Marzec, his testimony, information and cooperation despite rather strenuous objections of persons within the Bureau; that he personally concerned himself with this case and had both general and specific knowledge of what has gone on to date in said case; and more particularly that he had at least a general knowledge of the substance of this counsel's conversations with his assistants. He is entitled to much credit for his actions and success in bringing these other Defendants to the Bar of Justice and as of this date the successful prosecution of at least one of them.

This Counsel again on information and belief as aforesaid states that said United States Attorney had full personal knowledge of said motions presented to this Court on January 23, 1957 and that it was his determination that such action should be taken. This is most regrettable.

208 **Conclusion.**

In the light of the foregoing, this defendant has a clear right to have his motions granted and the cause continued, as prayed for and such further relief as this Court may deem proper.

Respectfully submitted,

Joseph A. Struett,
Attorney for Joseph T. Marzec, Defendant.

209 State of Illinois, }
County of Cook, } ss.

Joseph T. Marzec, being first duly sworn, on oath deposes and says that he is one of the defendants in the above entitled cause; that he has read the above and foregoing motions being made by him to vacate the order entered in said cause on January 23, 1957, setting his trial for February 4, 1957, before the trial of the co-defendants in said cause, and also for a continuance and other relief, and that he has also read the above and foregoing brief in support of said motions, and that he knows the contents of said motions and said Brief, and that the facts set forth in said motions and in said Brief insofar as they are based on his personal knowledge are true and correct, except as to any matters therein set forth upon information and belief, and as to any such matters so set forth upon information and belief, he believes them to be true.

Joseph T. Marzec.

Subscribed and sworn to before me this 29th day of January A.D. 1957.

Christine Codner,
(Seal) *Notary Public.*

210 State of Illinois, } ss.
County of Cook. }

Joseph A. Struett being first duly sworn, on oath deposes and says that he is the attorney for the defendant Joseph T. Marzec in the above entitled cause; that he prepared the above and foregoing motions by said defendant to vacate the order entered in said cause on January 23, 1957, setting the trial of said defendant for February 4, 1957, before the trial of his co-defendants, and also for a continuance and other relief in said cause; that he also prepared the above and foregoing brief being filed in support of said motions; that the facts set forth in said motions and in said brief insofar as they are based upon his personal knowledge are true and correct, except as to those facts set forth therein upon information and belief, and as to such facts set forth therein on information and belief, he believes them to be true.

Joseph A. Struett.

Subscribed and sworn to before me this 29th day of January A.D. 1957.

Christine Codner,
(Seal) *Notary Public.*

211 Defendant's Exhibit A.

Transcript of Proceedings (of January 23, 1957) had in the above-entitled cause before the Honorable John P. Barnes, Chief Judge of said Court, in his court room in the United States Court House at Chicago, Illinois, on Wednesday, January 23, 1957, at 10:00 o'clock a.m.

Appearances:

Hon. Robert Tieken, United States Attorney, (450 U. S. Court House, Chicago 4, Ill.), represented by Albert F. Manion, Esq., on behalf of the Government;

Bernard H. Sokol, Esq., on behalf of Defendant Stanley T. Kusper;

Messrs. Breen, Brumlik & Schaffenegger, (209 S. LaSalle St., Chicago 4, Ill.), represented by Edwin T. Breen, Esq., and John V. Schaffenegger, Esq., on behalf of Defendant Frank A. Brandt;

Leo Klein, Esq., (10 S. LaSalle St., Chicago 3, Ill.), on behalf of Defendant Bruno L. Sobieraj;

Joseph A. Struett, Esq., (105 W. Madison St., Chicago 2, Ill.), on behalf of Defendant Joseph T. Marzec.

And thereupon the following proceedings were had herein:—

By the Clerk: No. 55 CR 679, United States of America *vs.* Frank A. Brandt, et al.

Motion of the Government for severance for trial of defendant Joseph T. Marzec.

By Mr. Manion: If the Court please, one of the defense attorneys has not yet arrived, Mr. Bernard Sokol.

212 Do you want to pass this for a moment until he arrives?

By Mr. Struett: If the Court please, I could be heard on my motion. It is very short.

The motion does not give us very much time. It sets up facts; it is not verified, it contains no brief.

I would like ten days to answer, verified, and I will have my brief on file as required.

By the Court: What is the motion?

By Mr. Manion: Your Honor, this is a motion by the United States asking for a severance of the defendant Marzec from the defendants Brandt and Kusper, for trial.

Exactly a year ago today, your Honor, this Court heard various motions for severance filed on behalf of each of the defendants in the case. At that time the United States opposed such severance.

The motion this morning admittedly is a drastic change in the Government's position in this matter.

The reason for the motion at this time is this: The defendant Sobieraj, as of last Friday, appeared and entered a plea of guilty, and has indicated that he would testify for the Government if called as a witness. And we have advised the attorneys representing the other defendants—

(At this point there was an interruption of the proceedings, due to a disturbance in the corridor outside the court room door; after which the following further proceedings were had herein:—)

By Mr. Manion: To resume, your Honor, this motion this morning represents a substantial change in the Government's position, as we realize.

And the reason for it is prompted by the entry of a plea by the defendant Sobieraj—

By the Court: What was that last name? I didn't get it.

213 By Mr. Manion: The reason for this motion has been prompted in the first place by the entry of the plea by

the defendant Sobieraj, and an indication by him that he will be willing to testify on behalf of the Government.

He has also made available to the United States additional documentary evidence, which we have not had previously. And we have been examining it since Friday, when we received it.

If counsel for the defense desires to see that evidence we will be able to make that available to them.

I tell them that now for the record.

In the first instance this case was originally prepared and developed by the Internal Revenue Service as to the defendant Marzec only.

The defendant Marzec at his own request and by advice of counsel—and I think Mr. Struett will tell you this—appeared before the Grand Jury and gave testimony, which led to the inclusion of the other three defendants.

The United States attorney has been under the impression that the defendant Marzec would be available to testify for the Government in this case even though he was a defendant. However, Mr. Struett has now advised us that he will not be available to testify for the Government so long as he remains joined to the other defendants for trial.

His testimony is the best direct evidence to the defendants, and we believe by using the defendant Sobieraj, who has pleaded guilty, and if we can call the defendant Marzec we may very well shorten this trial and avoid many complicated issues and circumstantial proof.

Now, in fairness to Mr. Struett I will say for the record at this time that Mr. Struett has not represented to the United States that he would permit us to call Mr.
214 Marzec as a witness, or that he would make Mr. Marzec available to us if we were to try Mr. Marzec in advance of the other two defendants. He has petitioned the Court for a severance as to Marzec, and to continue his trial until a later date.

However, it is the position of the United States that we would prefer to try the defendant Marzec first, because we wish no confusion in the record as to any possible equitable immunity in so far as we can control it with relation to the defendant Marzec.

There has been no deal made with him. That is not the reason for this. We believe the only reason we are estopped from calling him under the present status of the case is under Section 3481, Title 18, prohibiting a defendant from appearing except at his own request.

It is our understanding of the law that if the severance is granted the defendant Marzec, as to a separate trial, that he then may be called by the Government as a witness under subpoena in the trial of the other two defendants in the cause. And that is essentially the reason for the motion.

I would also advise the Court, and the other defense attorneys, that as of yesterday the United States has obtained new and additional evidence as to the defendant Brandt and the defendant Kusper.

That evidence has just come in to our possession, and only partially examined at the time, as of yesterday. I believe that we shall have to file, in fairness to the defendants, and as a part of the record, an amended bill of particulars, which we will attempt to do by Friday, as to the other two defendants.

That additional evidence may very well afford an additional reason as to severance for trial as to them, because at the time these motions for severance were argued
215 before the Court a year ago today, at that time to the knowledge of the United States the evidence would be essentially the same as to all four defendants. But at this time, as of yesterday we have received additional facts which would tend to throw light upon the guilt or innocence of the defendants Brandt and Kusper which would not include the defendant Marzec.

By Mr. Struett: Well, if your Honor please, I would like to answer these questions or these statements under oath, and file a brief.

This is a complete change of position, and it is very prejudicial to the rights of my defendant.

By the Court: In what respect?

By Mr. Struett: In every respect. I would like to argue it. I am working on an answer and a brief, and I would like to have it on file, and I would like to argue it.

By the Court: When do you want to try this case?

By Mr. Manion: The matter has been set for trial for February 4th, your Honor, and the Government will be prepared to proceed at that time.

By the Court: What is the number of the case?

By Mr. Manion: It is 55 CR 679.

By the Court: What time was it started?

(Documents handed to the Court.)

By the Court: It was started almost two years ago. It is almost time to dispose of it.

By Mr. Breen: If the Court please —

By the Court: Wait a minute.

Now, if defendants in a criminal case have rights to be tried together that is a new one to me.

Is that what you contend?

By Mr. Struett: No. And I don't like to get in an
216 argument here on a motion where I want to file an answer and a brief on it.

By the Court: No. I just want to find out what possible issues could be made on the motion of the Government for a severance.

By Mr. Struett: They should have told your Honor a year ago that they can't make out a case without my defendant.

By the Court: Well, that may be.

By Mr. Struett: Then they come in here, and they re-

fuse a motion for a severance, and now at the last minute, knowing that I am not ready for trial, and then they want to put my client to trial first, ahead of the other defendants and deprive them of substantial rights which he admits we may have under Supreme Court authority.

By the Court: My dear man, your client has been a defendant in this court since the early months of 1955.

By Mr. Struett: I understand.

By the Court: He has pleaded not guilty.

By Mr. Struett: I understand.

Now, they have completely changed their position. And I would like to answer this motion, and I would like to file a brief.

By the Court: Now, tell me, what objection can you make to a motion for severance?

By Mr. Struett: I have no objection to the motion for severance.

By the Court: Motion for severance is granted.

By Mr. Struett: All right.

By the Court: Now, what else?

By Mr. Struett: Now, I don't know whether these other defendants—

217 By the Court: What else is there to be determined?

By Mr. Struett: Then he wants to try my man first. I want to answer to that part of his motion.

By the Court: Well, tell me what objection you can have?

By Mr. Struett: Why, I am not ready for trial. It would be prejudicial of my client's rights. And it is a flagrant violation, how he misled me in this matter. And I will set it up under oath; that is exactly the situation, I will set that up by verified motion and answer, and give you the facts and the law. That is all I want to do.

By the Court: Well, you have been standing here on a plea of not guilty for almost two years.

By Mr. Struett: Certainly I have, and presuming that he would have to use my client, and would use my client.

By the Court: You say he won't be available to him.

By Mr. Struett: I haven't said that.

By the Court: He stated that.

By Mr. Struett: No, he didn't. He has known all the time my client would be available.

By the Court: Is that right?

By Mr. Manion: Mr. Struett advised me as of last week—and I think Mr. Struett will agree with me—that as long as Mr. Marzec remains joined with the other defendants for trial that he would not be available to the Government as a witness.

By Mr. Struett: My client has been available.

By the Court: Have it ready for trial on the 4th of February at 10:00 o'clock.

By Mr. Struett: Can I file an answer to this motion?

By the Court: The motion is granted. You said you had no objection.

218 By Mr. Struett: To the severance.

By the Court: Your case has been set for lo these many months—time for you to go to Europe and come back.

By Mr. Struett: If your Honor please, is it your contention—?

By the Court: Get it ready for trial on the 4th of February.

By Mr. Struett: If the Court please, I want to file an answer to his motion to try my defendant first.

By the Court: Well, the whole case has been set for the 4th of February, and it is not going to be changed; you are going to trial on the 4th of February.

By Mr. Struett: If your Honor please—

By the Court: (Addressing the Clerk.) Call the next case.

By Mr. Breen: If your Honor please, may I be heard just a moment? This is another aspect of the case. We represent different defendants.

By the Court: What do you want to say?

By Mr. Breen: I represent the defendant Brandt. And up to this time until this surprise change in tactics my defendant was to stand trial jointly with the other defendants. Now, ten days before trial there is a shift in position by the Government, and the case is set for trial, in so far as Brandt is concerned, and Kusper, represented by Mr. Sokol, for February 4th, the same date he is going to trial. How can we get ready for trial, we would have to reset that date.

By the Court: You will go to trial immediately after the other gentleman.

Call the next case (addressing the Clerk).

By Mr. Sokol: If the Court please—

219 By Mr. Struett: If your Honor please, I assume that I may have an objection to your Honor's ruling. And I would like to have a copy of this transcript as soon as I can get it.

By the Court: You make your business arrangements with the Reporter outside of court, if you please.

By Mr. Sokol: If the Court please, I represent Stanley Kusper. And I don't want to make any representations consonant with what has been said before, so I don't want to inherit some of the Court's reactions.

By the Court: Now, I have heard a good many motions on this. Make your motion, quickly.

By Mr. Sokol: I would like to move that the defendant Kusper be tried separately from the defendant Brandt.

By the Court: Any objection?

By Mr. Manion: We have no objection at this juncture of the case. We have heretofore advised the Court that we felt that these men could in all fairness be tried

together, and we see no inherent prejudice to the defendants Brandt and Kusper if they remain jointly tried. If they remained joined for trial we believe that they can be fairly and expeditiously tried together. However, if the Court would prefer otherwise in its discretion—

By the Court: Having granted one severance, you may have a severance. You gentlemen be ready in order because I will try you all right straight through.

By Mr. Sokol: Very well.

Now, I have one other matter to mention, and I think Mr. Manion will bear me out. I have been working pretty hard on this case, and I have been getting ready.

By the Court: Now—

By Mr. Sokol: Let me finish, if your Honor please.

220 By the Court: Well, I am telling you you will be ready for trial just as soon as I finish the cases in order.

By Mr. Sokol: There has not been one single continuance asked for by me.

By the Court: Listen.

By Mr. Sokol: But, your Honor, you won't let me finish. I want to ask for certain discovery, your Honor.

By the Court: Listen. If you don't quit talking when I talk I will have you removed. When I talk I talk, and nobody interrupts me. Don't try to talk me down.

Now, what is your further motion?

By Mr. Sokol: My further motion is this: In view of the fact that Mr. Manion has indicated that he is going to file a new bill of particulars, and in view of the fact that he has come into possession of new evidence, and that this Court has refused certain motions I have made under 17(c) and under Rule 16, and the fact that Mr. Manion has not had an opportunity to look at this—and he tells me that he is not yet finished with it—that I be given leave, and I expect to file motions under 17(c) and 16, so that I may find this new discovery.

By the Court: This new matter, tell them about it in your bill of particulars. When are you going to file it?

By Mr. Manion: I will file it on Friday.

By the Court: File it on Friday.

And you gentlemen be ready for trial in order—alphabetical order after this one defendant—

By Mr. Manion: Marzec.

By the Court: After Marzec. In alphabetical order.

221 Certificate.

I hereby certify that the above and foreging transcript comprising pages numbered consecutively from 1 to 16 is a full, true and accurate transcript of my original shorthand notes of the proceedings had upon the hearing of the above matters in the aforesaid cause on Wednesday, January 23, 1957.

Roy E. Fuller,
Official Court Reporter, United States District Court, Northern District of Illinois.

January 23, 1957.

222 IN THE UNITED STATES DISTRICT COURT.
• • (Caption—55-CR-679) • •

Tuesday, January 29, 1957.

Present: Honorable John P. Barnes, Chief District Judge.

This day comes the United States by the United States Attorney comes also the defendant Frank A. Brandt in his own proper person and by his counsel and by leave of Court first had and obtained withdraws his plea of not guilty heretofore entered as to Count 1 of the Indictment and being now arraigned upon said count pleads guilty thereto and on motion of the Government by the United States Attorney it is

Ordered that Count 2 of said indictment be and the same is hereby dismissed as to said defendant and it is

Further Ordered that this cause be and the same is hereby continued to February 4, 1957 at 10 A. M. for disposition as to the defendant Frank A. Brandt.

223 IN THE UNITED STATES DISTRICT COURT.
* * (Caption—55-CR-679) * *

GOVERNMENT'S ANSWER TO MOTIONS OF DEFENDANT JOSEPH T. MARZEC TO VACATE ORDER ENTERED JANUARY 23, 1957, AND FOR CONTINUANCE AND OTHER RELIEF.

Now comes the United States of America by R. Tieken, United States Attorney for the Northern District of Illinois, and in answer to motions of defendant Joseph T. Marzec to vacate order entered January 23, 1957, and for continuance and other relief, states:

I.

In Answer to Motion to Vacate Order Entered January 23, 1957:

1. In answer to Paragraph Number One of said motion, the Government admits that notice of such motion was mailed to the defendant Marzec on Friday, January 18, 1957, and that such notice was served five days prior to hearing on such motion, including the intervening Sunday. The
224 Government further admits that such motion came on for hearing on Wednesday, January 23, 1957, rather than on Monday, as provided in Rule 3(a) of the Criminal Rules adopted by the United States District Court for the Northern District of Illinois. The Government further states that such motion and notice thereof, together with the supporting affidavit as to the mailing of such notice, was filed with the Clerk of the United States District Court for the Northern District of Illinois on Friday, January 18, 1957. The Government denies that any other or further supporting affidavits are or were required in support of such notice and motion. The Government states that such

motion was for a severance of the defendant Marzec from the other defendants for trial and that such motion was not opposed by defendant Joseph T. Marzec and that no objection thereto was made in his behalf.

2. In answer to Paragraph Number Two of such motion, the Government admits that such motion was for the purpose of severing the defendant Marzec from the other defendants for trial, but denies that such motion is or was designed to deprive the defendant of any rights to executive clemency or to postponement of trial or otherwise. The Government further denies that the defendant in fact or in law has such rights to executive clemency or to a dismissal of the pending indictment against him or to postponement of trial, as alleged and set forth in such motion.

225 3. In answer to Paragraph Number 3 of such motion, the Government states that at all times from and including November 8, 1954, at which time counsel for the defendant first presented a transcribed statement of the defendant Marzec to representatives of the Internal Revenue Service and the United States Attorney and until on or about January 12, 1956, counsel for the defendant Joseph T. Marzec stated and represented to such representatives of the Internal Revenue Service and the United States Attorney that the defendant Marzec was willing and desirous of testifying for and on behalf of the Government as to the culpability of the co-defendants Frank A. Brandt, Stanley T. Kusper and Bruno J. Sobieraj and that counsel for the defendant Joseph T. Marzec, as well as the defendant himself, understood and agreed that no promise of immunity, dismissal, pardon, or other consideration would be given, offered or made to the defendant Marzec in return for such testimony as to the co-defendants. The Government further states that on or about January 12, 1956, counsel for the defendant Marzec first represented to the United States Attorney that if defendant Marzec should ap-

pear and testify as against his co-defendants that he, Marzec, might claim equitable immunity. The Government further states that immediately thereafter on divers occasions and including January 23, 1956, before the defendant Marzec's original motion for severance came on for hearing, that the United States Attorney and his Assistants
226 at all times advised counsel for the defendant Marzec that the Government did not agree with such contention on the part of the defendant and that it was the intention of the Government to proceed to trial as against all defendants jointly in reliance upon the procedure and authority of *United States* v. *Beck*, CA 7 1941, 118 F. 2d 178, 183. The United States Attorney and his representatives further advised counsel for the defendant Marzec at all times from and after January 12, 1956, that in the event a severance should be obtained or granted as to defendant Marzec from the other defendants for trial that the Government would elect to proceed to trial as to defendant Marzec before proceeding to trial as to his co-defendants. The Government denies that the defendant Marzec or his counsel ever advised the United States Attorney at any time prior to January 14, 1957, that the defendant Marzec would refuse to testify as to the other defendants unless he was severed from such co-defendants for trial, and unless such co-defendants were put to trial before the defendant Marzec. The Government further states that at all times from January 23, 1956, at which time the defendant Marzec's motion for severance was denied, until January 14, 1957, the United States Attorney did not know whether the defendant Marzec would or would not offer to testify in the course of a consolidated trial on behalf of the Government as to the culpability of his co-defendants, and states that during such period of time counsel for the defendant Marzec at various times indicated to the United States At-
227 torney that they were considering entering a plea of

guilty on behalf of their client as to one court of the indictment and in the alternative were considering proceeding to trial jointly with the co-defendants and volunteering the testimony of the defendant Marzec in the course of such consolidated trial. The Government denies that any agreement was made by the United States Attorney or the Internal Revenue Service with the defendant Marzec with regard to his testimony and cooperation as to the trial of his co-defendants except that the United States Attorney has at all times from and after December 15, 1955, at which time the indictment in this cause was returned, stated and represented to counsel for the defendant Marzec that in the event such defendant did withdraw his plea of not guilty as to one of the two counts of this indictment pending against him the United States Attorney would at such time move this Court for the dismissal of the remaining count pending against the defendant Marzec. The Government further states that the United States Attorney and his representatives, as well as the representatives of the Internal Revenue Service, have at all times expressly advised counsel for the defendant Marzec that the Government did not and would not consent to any agreement with regard to the dismissal of the entire indictment against the defendant Marzec and would not elect to proceed to trial as to the co-defendants before trial as to the de-
228 fendant Marzec. The Government further states that no offer or inducement has at any time been made to the defendant Marzec or to his counsel for the purpose of obtaining his cooperation or testimony other than hereinabove set forth.

4. In answer to Paragraph Number Four of such motion, the Government states that the statements made therein are argumentative and speculative. The Government further states that the other questions raised in such paragraph of this motion are moot in that the defendants Frank

A. Brandt and Bruno J. Sobieraj have previously entered pleas of guilty and the defendant Kusper has been severed from the defendant Marzec for trial.

5. In answer to Paragraph Number Five of such motion, the Government represents that the statements contained therein are argumentative and speculative.

6. In Answer to Paragraph Number Six of such motion, the Government denies that the Government's motion for severance filed on January 18, 1957, was made in bad faith and further denies that the Government has at any time in the course of preparation for trial of this cause acted in bad faith as to the defendant Marzec or as to any of the other defendants in this cause. The Government expressly denies any obligation to the defendant Marzec with regard to executive clemency or the dismissal of the indictment pending against him and denies any agreement in fact or in law to such effect.

229 7. In answer to Paragraph Number Seven of such motion, the Government denies that the severance of the defendant Marzec is in any way prejudicial to the rights of the defendant or contrary to law, equity and good conscience. The Government further states that counsel for the defendant Marzec has been advised at all times by the United States Attorney that the defendant Marzec was considered to be a real and bona fide defendant in this cause and that the Government intended to proceed to trial as to the defendant Marzec preferably jointly with his co-defendants or, in the alternative, as to the defendant Marzec in the first instance. The Government denies any intention to prejudice or surprise counsel for the defendant Marzec.

8. In answer to Paragraph Number Eight of such motion, the Government states that it is within the proper purview and authority of the United States Attorney and of the Trial Court to elect and determine the order in

which respective counts and co-defendants shall be tried where severance has been granted as between multiple defendants joined in the same indictment. The Government further states that its motion for severance as to the defendant Marzec and its election to proceed to trial as to such defendant before trial of his co-defendants was in law and in fact an ex parte matter to which no notice
230 need be given to any of the defendants. The Government further states that this cause has been set for trial on February 4, 1957, since December 5, 1956, and that the election of the Government to proceed to trial as to the defendant Marzec on that date before trial as to his co-defendants in no way operated to surprise or prejudice such defendant.

II.

In Answer to the Motion for Continuance and Other Relief:

1. In answer to such motion, the Government denies that the defendant Marzec is entitled to a continuance or postponement of his trial for the purpose of requesting executive clemency from the United States of America. The Government further denies that an agreement for such executive clemency, dismissal of the indictment, or other consideration has at any time been made by the United States Attorney with the defendant Marzec or his counsel acting on his behalf, and states the fact to be that at all times the Government has refused and rejected the requests of counsel for the defendant Marzec for such arrangement, agreement and understanding.

2. In answer to such motion, the Government objects to a continuance of this matter until the September 1957 term of the United States District Court and denies that the severance of the defendant Marzec from his co-defendants for trial has in effect operated to prejudice such

defendant and his counsel in their preparation for
230A trial. The Government further states that counsel
for the defendant Marzec has had more than adequate time to file pre-trial motions in this cause prior to February 4, 1957, and denies that the Government, through the United States Attorney or the Internal Revenue Service or any of the representatives thereof, has at any time given counsel for the defendant Marzec or the defendant Marzec himself reason or grounds to believe that such pre-trial motions need not be made or to believe that the defendant Marzec would not proceed to trial as a regular defendant in this cause. The Government further denies that any agreement has ever existed between the United States Attorney and counsel for the defendant Marzec which would lead such counsel to believe that preparation for trial was unnecessary by such counsel. The Government admits that the United States Attorney has known since sometime in September 1956 that counsel for the defendant Marzec has in fact made arrangements to go on a world cruise between March 15 and July 1, 1957, and states that such arrangements of counsel were taken into consideration in agreeing to a trial date as of February 4, 1957, and that such trial date was selected at the suggestion and with the acquiescence of counsel for the defendant Marzec.

Wherefore it is respectfully submitted that the motions of the defendant Joseph T. Marzec to vacate the order entered January 23, 1957, and for continuance and other relief, be denied.

R. Tieken,
United States Attorney.

231 State of Illinois, } ss.
County of Cook. }

Albert F. Manion, being first duly sworn on oath, deposes and says that he is the Assistant United States Attorney presently charged with the preparation and trial of the defendant Joseph T. Marzec in the above-entitled cause and has been so assigned since on or about May 20, 1956; that he has prepared the above and foregoing answers to the motions of the said defendant Joseph T. Marzec to vacate the order entered in said cause on January 23, 1957, and for a continuance and other relief in said cause; that the facts, averments and denials set forth in said answers insofar as they are based upon his personal knowledge are true and correct, and that he has been informed as to the remaining facts, averments and denials therein set forth by the persons directly acquainted with such facts, averments and denials, and that upon such information and belief he states them to be true.

Albert F. Manion,
Assistant U. S. Attorney.

Subscribed and sworn to before me this 4th day of February, 1957.

John M. Dziedzic,
(Seal) *Notary Public.*

• • • • •

45 By the Court: I understand there are two motions here upon behalf of the defendant Marzec. The order rendered on the motions of the defendant to vacate the order entered January 23, 1957, directing that the trial of the defendant Marzec proceed before the trial of the
46 other defendants, and a motion for continuance and other relief, as it is phrased here.

On page 7 of his motion the defendant says:

"Now comes the defendant Joseph T. Marzec by Joseph A. Struett, his attorney, and moves for a continuance and postponement of the time of trial of this defendant to a date following the disposition of the cases against the other defendants herein, and until action is taken by the Government to accord to this defendant his right to executive clemency and has moved for a dismissal of the indictment against him, on the basis of the agreement on behalf of this defendant with the United States Attorney, as set forth in the foregoing motion, and in the light of the affidavits set forth in the brief filed in support of this and the foregoing motion, and moves for such other and further relief as this Court may deem proper under the circumstances of this case.

"In the event that the foregoing motion of this de-
47 fendant, set forth immediately above, is denied, defendant moves for a continuance and postponement of the trial of his case from February 4, 1957, to a date in the September 1957 term of this Court, and in support of this motion, states that the Government's concededly sudden and dramatic change of position in disavowing its obligation to this defendant under its agreement, as aforesaid, and in putting him to trial, and in doing so first, before the trial of other defendants, has taken this defendant's counsel by surprise, without adequate time to recast and develop a defense and prepare and present pre-trial motions necessary if he is to go to trial, and to prepare and present evidence at such trial, none of which work and preparation was contemplated or performed while said agreement with the United States Attorney appeared to be honored by him."

The indictment in this case was returned on December
15, 1955. Mr. Marzec filed his appearance upon the following day, December 16, 1955, and counsel for the
48 defendant Marzec entered his appearance on the same date. As early as January 23, 1956 an order

was made by the Court denying the motion of Mr. Marzec for severance, and for separate trial.

On February 20, 1956, Mr. Marzec entered a plea of not guilty. The case was set for trial May 21, 1956.

On December 5, 1956 by agreement the cause was continued for trial from January 9, 1957 to February 4, 1957. I think it is a fact that the date of February 4, 1957 was fixed because counsel for Mr. Marzec indicated he contemplated a vacation trip of some sort at a somewhat later date.

49 I don't think any adequate reason has been set forth for a continuance. The case has been standing on a plea of not guilty for almost eleven months, all of eleven months.

The plea of not guilty was entered on February the 20th, 1956—twelve months, all but sixteen days, ago, and such preparations as were necessary to be made should have been made during this interval.

Accordingly, the motion for continuance, for whatsoever purpose, will be denied. The motion to strike the petition will be overruled. You may go to trial now, gentlemen.

Bring in the jury.

By Mr. Struett: If your Honor please, might I make some motions now outside the presence of the jury so we can determine the things necessary before we go? If we could do that today without starting the jury, I would appreciate it.

By the Court: Go ahead and make your motion.

By Mr. Struett: If your Honor please, I assume, and I just want to protect my record, that I think if we do it first it may save us a lot of trouble; but I would like to make a motion that as to my motion for a continuance

50 pending executive clemency, my application for executive clemency, its denial, that all my further acts

as I set forth in my petition are reserving to me that motion, and nothing is to be construed as a waiver thereof. I ask that specifically.

By the Court: You have such rights as the law gives you, and you have all of them, and they will all be accorded to you.

If you don't have them, you don't have them, and if you have them, you have them.

By Mr. Struett: If your Honor please, I have given consideration to discovery, and I would like to ask that the Government make available to me every bit of evidence that they had or concede that they had no evidence against these other people until—

By the Court: I am not going to spend any time with that.

By Mr. Struett: It is material on the question of intent, your Honor. I have given them all my evidence months ago.

By the Court: When the case is ready for trial, it is ready for trial. Bring in the jury.

By Mr. Struett: I lost a friend of mine this morning. I would like to go.

51 By the Court: Bring in the jury.

* * * * *

232 IN THE UNITED STATES DISTRICT COURT.
• • (Caption—55-Cr.-679) • •

Monday, February 4, 1957.

Present: Honorable John P. Barnes, Chief District Judge.

This cause this day being called for trial as to the defendant Joseph T. Marzec comes the United States by the United States Attorney comes also the defendant in his own proper person and by his counsel and it is

Ordered that leave be and is hereby given to the Government to file, instanter, its answer to motions of the defendant to vacate the order entered herein on January 23, 1957 and for a continuance and other relief and the Court having heard the arguments of counsel and being fully advised it is

Further Ordered that said motions of the defendant be and the same are hereby denied and it is

Further Ordered that the motion of the Government to strike the defendant's brief in support of his motions to vacate the order entered January 23, 1957 and for continuance and other relief be and the same is hereby overruled and denied and the defendant having heretofore interposed a plea of not guilty to the Indictment filed herein against him for his defense puts himself upon the country and it is

Further Ordered that a Jury come and during the voir dire examination of the Jurors the hour of adjournment having arrived it is

Further Ordered that this cause be and the same is hereby adjourned to February 5, 1957 at 10 A. M. for further trial.

233 IN THE UNITED STATES DISTRICT COURT.
* * (Caption—55-Cr.—679) * *

Monday, February 4, 1957.

Present: Honorable John P. Barnes, Chief District Judge.

On motion of the Government by the United States Attorney it is

Ordered that this cause be and the same is hereby continued for disposition as to the defendant Bruno L. Sobieraj until the close of the trials as to the defendants Joseph T. Marzec and Stanley T. Kusper.

234 IN THE UNITED STATES DISTRICT COURT.
* * (Caption—55-Cr.—679) * *

Monday, February 4, 1957.

Present: Honorable John P. Barnes, Chief District Judge.

On motion of the Government by the United States Attorney it is

Ordered that this cause be and the same is hereby continued for disposition as to the defendant Frank A. Brandt until the close of the trials as to the defendants Joseph T. Marzec and Stanley T. Kusper.

IN THE UNITED STATES COURT OF APPEALS

For the Seventh Circuit.

No. 11979

United States of America, *Plaintiff-Appellee,* *vs.* Joseph T. Marzec, *Defendant-Appellant.*	Appeal from the United States District Court For the Northern District of Illinois, Eastern Division. — Honorable John P. Barnes, Judge Presiding.

CONDENSED STATEMENT OF EVIDENCE IN NARRATIVE FORM.

1-6 Proceedings before the Honorable John P. Barnes, one of the Judges of the United States District Court for the Northern District of Illinois, in the above-entitled cause, beginning Monday, February 4, 1957:

(Proceedings of February 5, 1957.)

SOPHIE KUBON, being first duly sworn, testified on behalf of the government:

7-16 *Direct Examination.*

The witness, an employee of the Director of Internal Revenue, identified government's exhibits 1, 2 and 3 as being individual income tax returns for the years 1949 and 1950, signed by Joseph T. and Florence Marzec. Exhibits 1 and 2 were returns for the years 1949 and 1950 respectively, filed March 15 of 1950 and 1951. Exhibit 3 was an

amended return for the year 1950, filed June 29, 1951 and showing additional income of $39,820. In the space for the signature of the person other than the taxpayer preparing the return on Exhibit 3 was typed in "A. J. Wilson, CPA."

JOSEPH PRANICA, being first duly sworn, testified on behalf of the government:

Direct Examination.

25 The witness was the treasurer of the Polish Roman Catholic Union. He identified government's group Exhibit A as being all appraisals, correspondence, and loan applications submitted to the Polish Roman Catholic Union during 1949 and 1950. Government's group Exhibit B consisted of the insurance policies and matters of record concerning the same loans. The Polish Roman Catholic Union is a fraternal organization doing business in twenty-seven states with a membership of about one hundred seventy-five thousand people. They have total assets of about Thirty-eight million dollars and were set up on a large system. They attempt to keep their investments up to forty per cent of their total assets and mortgage loans. The witness was a director of the organization from 1950 to 1954, and during that time, the defendant was employed by the organization. Government's group Exhibits A and B constituted all records relating to mortgage loans that were available in the organization for the years 1950 and 1951.

26–33 Stipulation that Joseph Thomas Marzec was a licensed real estate broker in the State of Illinois from May 26, 1945 continuously through the years 1949 and 1950.

34–57 Stipulation that government's Exhibit 6 is a true

and correct copy of a check dated March 16, 1949, payable to the order of Thomas G. Scott in the amount of Two thousand five hundred fifty dollars, was delivered to Mr. Scott on or about the date it bears; that government's Exhibits 7 through 13 are true and correct copies of cashier's checks issued by the City National Bank and Trust Company on or about the date appearing on each of them; that govenment's Exhibit 14 is a true and correct copy of a cashier's check dated March 18, 1949 and payable to Robert N. Erskine, in the amount of Two thousand six hundred dollars; that government's Exhibits 15, 16 and 17 are true and correct copies of cashier's checks issued by the American National Bank and Trust Company on or about the date each of them bears; that government's Exhibit 18 is an escrow file of the Chicago Title & Trust Company, Escrow 173999, opened on or about July 9, 1950; that government's Exhibit 18-A is a check payable to Joseph Marzec in the amount of One thousand two hundred fifty dollars pursuant to instructions under Escrow 17999; that government's Exhibit 19 is the original jacket and complete file of the Chicago Title & Trust Company as to a certain escrow agreement entered into about August 2, 1950; that government's Exhibit 19-A is a check of the Chicago Title & Trust Company payable to Joseph Marzec in the amount of Two thousand six hundred dollars pursuant to arrangements under the escrow covered by government's Exhibit 19; that government's Exhibit 20 is a transcript of a ledger sheet of a checking commercial account of Joseph T. Marzec with identifying numbers of the Pioneer Trust & Savings Bank, during the year 1949; that government's Exhibit 20-A is a copy of a deposit slip of the Pioneer Trust & Savings Bank relating to deposits appearing on government's Exhibit 20; that Mr. Evans, an escrow officer of the Chicago Title & Trust Company, would testify that with respect to government's Exhibit 19 there was an escrow

agreement between the Chicago Title & Trust Company with Sidney Pyster and Sol J. Schnitz, covering the sale of a piece of property located at 7202-8 South Michigan Avenue for a purchase price of Seventy-two thousand five hundred dollars, accompanied by a money lender's escrow agreement in which the Polish Roman Catholic Union agreed to make a sixty-five thousand dollar first mortgage and deposit the net proceeds of such mortgage in the sum of Sixty-three thousand eight hundred forty-one dollars in the escrow and that the Chicago Title & Trust Company was directed to pay the sum of Two thousand six hundred dollars to Joseph Marzec for services rendered; that the check previously marked government's Exhibit 19-A for identification was issued by the Chicago Title & Trust Company pursuant to that direction.

57–83 THOMAS G. SCOTT, being first duly sworn, testified on behalf of the government:

Direct Examination.

The witness was a real estate dealer in his own behalf and was engaged in such occupation during the years 1949 and 1950. He had occasion during those years to have dealings with Mr. Joseph Marzec of the Polish Roman Catholic Union. The Polish Roman Catholic Union made regular mortgages for him. These were first mortgages in connection with the sale of real estate by Mr. Scott. Mr. Scott arranged with Mr. Marzec about the mortgage. Government's Exhibit 21 is a book in which he kept a record of each building he bought in. He recorded his receipts in connection with those buildings on one side and disbursements on the other side. The records were made on or about the date of the various entries in the regular course of business. Government's Exhibit 22 for identification is

the record for the year 1950. 1949 is covered by Government's Exhibit 21.

The page of government's Exhibit 21 bearing the heading "7252 South Park Avenue" pertains to a building he acquired during the year 1949 and in connection with which he obtained a mortgage from the Polish Roman Catholic Union on about January 31. He talked to Mr. Marzec in connection with that mortgage about a week before in the office of the P. R. C. U. He asked Marzec for the amount he wanted and Marzec said that he could get it and if he was not about to get that much Mr. Marzec would tell him what he could get. He does not remember the particular amount on this piece of property. It was a five pe. cent mortgage for ten years. In connection with this loan he gave a commission of Four hundred dollars to Mr. Marzec. Sometimes the commission was determined on the basis of the mortgage and sometimes it wasn't. If he asked Mr. Marzec for a loan on which Mr. Marzec already had the application in, he would have to pay a little more for it.

He made a down payment on 6617 and 6619 South Perry on May 8, 1950. He went to see Marzec about that loan and Marzec told him that he already had an application in and would have to pay the other fellow something. He paid the loan commission of Seven Hundred dollars and he also paid Mr. Marzec Two hundred dollars on May 19 in connection with that property. These payments were made in cash.

The first loan he made, he had a conversation with Mr. Marzec. The broker had told him that the P. R. had a loan on the building which was about paid off. The broker suggested he could get them to make a new loan on it. He called them up and they told him to come out and see them. When he had the conversation with Mr. Marzec, he told him what he wanted was a loan. Marzec gave it to him and Marzec wanted a commission. He paid it to Marzec. Marzec

discussed the amount and manner of payment. Marzec said it had to be in cash. Mr. Marzec told him that the commission was to be three per cent of the loan. He paid Mr. Marzec a commission in connection with each loan procured for me from the P. R. C. U. in the year 1949 in cash. The same is true of the loans in 1950. They were usually three per cent of the mortgage price, although there may have been a little extra expense sometime. The commissions paid were recorded in government's Exhibits 21 and 22 for identification. He paid Mr. Marzec five hundred forty dollars in connection with the building at 6800 South Wabash Avenue. He paid Mr. Marzec Four hundred eighty dollars in connection with the building at 6321 South Carpenter, and Eight hundred and sixty dollars in connection with the building at 5675 Normal Avenue. He does not know if these were all three per cent of the principal amount of the mortgage. He paid five hundred twenty-five dollars in connection with the building at 7029 Prairie Avenue; those are the commissions paid to Mr. Marzec as best as he can recall during the year 1949.

Government's Exhibit 6 is a check to his order which he received in the amount of Two thousand five hundred fifty dollars. He cashed the check and paid the proceeds to Mr. Marzec in connection with the building at 4711-15 South Greenwood Avenue. He acquired a mortgage loan on the property located at 5740 Maryland Avenue during the year 1950 and paid a commission to Marzec of Four hundred dollars in cash. He paid a commission of Four Hundred twenty-five dollars in the year 1950 in connection with the property at 5612 Maryland Avenue.

During the year 1950, he had an occasion to make arrangements for a mortgage loan on the property located at 205 East Marquette Road. He had a conversation with Mr. Marzec in the P. R. C. U. office during the year 1950 in connection with that loan. He asked Mr. Marzec for the

loan and it was arranged. He made that loan for Mr. Perry who had offered him Six hundred dollars to arrange it for him. He agreed that the commission would be paid. He does not have any records of that loan except for the Six hundred dollars Mr. Perry paid me. He worked for a real estate firm, Slaughter & Company. Mr. Slaughter drove him and he made arrangements for the loan. He did not introduce Mr. Slaughter to Mr. Marzec. That commission was to be paid on a percentage of three per cent. He had no occasion to pay commissions to anyone at the P. R. C. U. other than Mr. Marzec and never discussed commissions with anyone there other than Mr. Marzec. These constitute all of the transactions he had with the P. R. C. U. or Mr. Marzec during the years 1949 and 1950.

Cross-Examination.

He first started dealing with the Union in about 1946 or 1947 and dealt with Mr. Marzec from the very inception. He knew that Mr. Brandt was the treasurer because he signed the commitments. He knew that they had to have an appraisal and knew the name of the appraiser. He knew the legal details had to be passed on by the legal department. He knew the head of the legal department was Kusper. He knew that Mr. Marzec would always have to go into Mr. Brandt's office to get the commitment, and saw him go into Mr. Brandt's office after he received the cash commission. He does not know of his own knowledge whether Marzec kept that money or distributed it to others.

CYRIL I. MILTON, being first duly sworn, testified on behalf of the government:

89–104 *Direct Examination.*

He is a real estate broker investor. He first met Mr. Marzec around 1949. He saw Marzec in connection with a mortgage on 6101 South Drexel in which he was interested as a broker. He asked Marzec for a loan of around Sixty-five thousand dollars. They agreed as to the terms of the loan. At that time they were paying four per cent commission and he was to receive one per cent as a finder's fee from the P. R. C. U. This finder's fee was ultimately paid by check drawn on the R. C. U. At the time of his first conversation with Mr. Marzec, Marzec told him that the commission would have to be put in escrow. He had a conversation with Mr. Marzec concerning the payment of the commission. Marzec asked him at that time to make some arrangement about this four per cent. He told Marzec that he was dealing with strangers for the first time and the thing to do would be to then place the money in escrow. Marzec finally agreed that they should place a certified check in escrow with Mr. Kusper. He has not talked much to Mr. Kusper at all. He does not know exactly how the check was handed over, but Mr. Kusper receipted for it. He does not remember whether Mr. Marzec originally requested the commission be paid directly to him, but he knows that all the money was to be paid directly to Marzec. The commission on this sale was Two thousand seven hundred dollars.

He obtained a mortgage from the P. R. C. U. for property located at the corner of Trumbull and Franklin Boulevard, and paid a commission to Mr. Marzec. Mr. Marzec told him that he should give Marzec One thousand six hundred dollars as soon as he got this mortgage. He suggested that he

give Marzec a check, and Marzec said it would have to be a cashier's check. He gave Marzec a cashier's check outside of his office, in the lobby of the P. R. C. U. Government Exhibit 15 is the copy of the check which he delivered to Mr. Marzec.

He negotiated a few loans during the year 1950 with Mr. Marzec. He was the broker for a loan of Forty-five thousand dollars on the property located at 4456 Washington Boulevard. He does not believe he gave him (Marzec) the commission personally on that property. Government Exhibit 16, copy of the cashier's check on the American National Bank to his order in the amount of One thousand eight hundred dollars refreshes his recollection. The money was in escrow with the Chicago Title & Trust Company. The purchasers of the building gave him that money and he bought this cashier's check with it. His signature is on government's Exhibit 16. He doesn't remember where he gave it to Mr. Marzec but it was purchased for the purpose of paying him a commission.

He negotiated a mortgage loan in August of 1950 for property at 2500 North Kedzie Boulevard. Government's Exhibit 17, cashier's check drawn on the American National Bank to his order in the amount of One thousand nine hundred dollars is the check he gave Mr. Marzec as commission on this transaction.

He never did business in negotiation of real estate mortgage loans with the P. R. C. U. with anyone other than Mr. Marzec. He does not know why he used cashier's checks payable to his own order rather than checks paid to the order of the P. R. C. U. Mr. Marzec instructed him to make his payments in this fashion.

104–111 *Cross-Examination.*

Robert N. Erskine, the payee of government Exhibit 14, was the attorney representing the purchasers of 6101 Drexel. Marzec first said that he wanted it in cash. He said

he couldn't put up the commission in cash. Marzec then said he would find out and later suggested he put the money up. He was in Mr. Kusper's office when the money was put up. He had no dealing with any of the other officers of the P. R. C. U. He knows who they were. The treasurer was Frank Brandt. He was the fellow who would send him a letter accepting the loans. He only knows what Mr. Marzec told him as to what he did with the cash or cashier's checks. He told me he split it four ways. Investigating agents from the Bureau of Internal Revenue asked him to produce the checks he paid Marzec with and he produced the checks that he bought. He did not have the District National Bank cashier's check. He told them about the first deal to the best of his recollection. He think he shows him certain papers or whether with reference to that deal. He does not remember them asking him about whether anyone else shared in the commissions he paid Marzec. He gave the Bureau of Internal Revenue a letter in that connection. He was asked some questions by a couple of men. They originally came back to get some of the evidence you have here that money was paid to Mr. Marzec. He does not recall whether Kusper's name came up in that connection.

111–112 *Redirect Examination.*

Defendant's Exhibits 1 to 6 were delivered to Mr. Reeb of the United States Attorney's Office in March of 1955. Nobody had seen these documents before then.

112 *Recross Examination.*

No one from the Internal Revenue ever asked him for such documents.

WILLIAM J. HOPPE, being first duly sworn, testified on behalf of the government:

113-127 *Direct Examination.*

He is engaged in a mortgage brokerage and insurance business. He negotiates first mortgage real estate loans for his clients and was engaged in such business during 1949 and 1950. He has negotiated real estate mortgage loans with the P. R. C. U. and Joseph Marzec. He first met Mr. Marzec in 1948, either at the office of the P. R. C. U. or at his office. He believes the substance of this conversation was that they had submitted one or two loans to Mr. Brandt, the treasurer of the P. R. C. U., and that Mr. Marzec was the representative through whom their loans would be negotiated. Following that conversation, they sent applications to the P. R. C. U. direct and a copy to Mr. Marzec. They paid commission to Mr. Marzec in connection with these loans.

"Q. Did you discuss commissions with Mr. Marzec when he visited you at your office?

A. In general.

Q. What did he say and what did you say about commissions, as best you can remember at this time?

A. Well, there was a certain stipulated amount of commission that was to go to—was to go on the application; not to go on the application, but was to be collected, and I also had the impression that Mr. Marzec's position in the matter was one in which officers or directors had concurred.

Q. Now, you say that was your impression?

A. That was my impression.

Q. From what source did you derive that impression, Mr. Hoppe?

A. Well, I would derive it largely from Marzec. Mr.

Marzec himself, but in the way of—no other person in the P. R. C. U. told me otherwise.

Q. Did anyone else in the P. R. C. U. at any time ever ask you for commissions?

A. No. Mr. Marzec was—I was told he was delegated by—to do the negotiation, and somehow or other I had the impression that the treasurer had approved that method of handling the negotiations."

Mr. Marzec stated the commissions would be approximately five per cent of the amount of the loan and that Mr. Marzec was to receive a share of that commission. In most cases four per cent was paid to Mr. Marzec by him. Following this conversation, several mortgages were approved by the P. R. C. U. and he is certain commissions were paid on each and every mortgage made by him in 1949 and 1950. They had several applications that were rejected. He did not offer to pay a commission on the loans which were rejected. He understood what the situation was and when he submitted the loan it was with the understanding that the commission would be paid to Mr. Marzec. There may have been cases where he tried to renegotiate the commission during 1949 and 1950, but generally speaking the pattern was four per cent to Mr. Marzec. He requested the commissions be paid in a cashier's check which he secured from the City National Bank. These checks were payable to Joseph Marzec. He does not think he obtained cashier's checks from the City National Bank payable to Joseph Marzec for other than real estate commissions. Government's Exhibits 7 through 13 are photostatic copies of checks delivered to Joseph Marzec by him in payment of real estate commissions during the year 1949. Government's Exhibit 11 is a photostatic copy of a cashier's check on the City National Bank and Trust Company payable to Joseph T. Marzec in the amount of Six Hundred dollars which he delivered to him

in the year 1950 in payment of a real estate commission. He has forgotten his home address, but mostly he mailed his original check to 4182 West Barry Avenue.

127-131 *Cross-Examination.*

Two or three years prior to 1948, they made no loans at the P. R. C. U. Part of that time he made loans with the former treasurer, Kozubal. He turned whatever correspondence he had over to the government at the United States Attorney's Office. When the agents came out, they wanted to see his files. He gave them the files, and he believes they read the correspondence. He understood that after the change Mr. Brandt was the treasurer. They would make an appraisal of the property by an independent appraiser. I knew in an indirect way that Mr. Sobieraj was the appraiser and that Mr. Kusper was the attorney.

ROBERT N. ERSKINE, being first duly sworn, testified on behalf of the government:

132-143 *Direct Examination.*

The witness testified that he was an attorney at law, and represented the purchasers of 6101 South Drexel Boulevard for which the mortgage negotiations were handled by the witness Milton. Government's Exhibit 14 for identification was a check on District National Bank payable to the witness' order in the amount of Two thousand six hundred dollars, endorsed by the witness, and deposited to an escrow in the Chicago Title & Trust Company. Government's Exhibit 23 is the forwarding letter for government's Exhibit 14. The witness did not recall what disposition he had made of government's Exhibit 14. He stated that government's Exhibit 23 was dictated by him and signed by both he and Kusper. Then it was put into escrow.

143 *Cross-Examination.*

Bureau of Internal Revenue agents did not come to see him about this case a long time ago.

143–146 (Government's Exhibit 23 read to the jury and government's Exhibit 14 described to the jury.)

Government's Exhibit 23 is as follows:

"Government's Exhibit No. 23 is a letter dated June 3, 1949, addressed to Mr. S. T. Kusper, attorney at law, Chicago, Illinois.

" 'Dear Sir:

" 'An application to the Polish Roman Catholic Union of America for a loan of $65,000.00 on property known as 6106-6112 Drexel Boulevard, Chicago, is this day being made by me as attorney and agent for certain parties but not individually and without personal obligation trust deed and note to be signed only by trustee taking title to property. As an evidence of good faith, and to cover any expenses relating to such loan, if consummated, I deliver to you herewith as in escrow cashier's check of the District National Bank of Chicago C-77120 for the sum of $2,600.00, payable to my order and endorsed by me to you.

" 'We are making an offer to purchase said property and must have a forty-five day irrevocable commitment for such loan, to be used as a part of the purchase price. If such commitment is given, you may hold such money until it is consummated or terminated. If the loan is consummated, we release all claim to said deposit. If, for any reason, the commitment is terminated by us, and we reserve the right to terminate at any time, then you will return to me upon demand the said cashier's check, provided I pay to you in currency $75.00 to cover preliminary expenses.

"'You will evidence your acceptance of the foregoing escrow deposit under the terms hereof by endorsing the copy of this letter.

Very truly yours,

Signed: Robert N. Erskine, 111 West Monroe Street
Accepted in script, Stanley T. Kusper.'"

146 Government's exhibit 14 is a cashier's check of the District National Bank payable to Robert N. Erskine in the amount of Two thousand six hundred dollars, Check No. C-77120, which corresponds with the check number appearing in Mr. Erskine's letter and on the reverse appears the script endorsements "Pay to the order of S. T. Kusper, Robert N. Erskine," and below that, "S. T. Kusper," and below that "Joseph T. Marzec".

MAX E. MILLER, being first duly sworn, testified on behalf of the government:

146-154 *Direct Examination.*

The witness was engaged in mortgage banking and construction work under the name of Max Miller & Son. He acted as a broker for procuring mortgages from insurance companies, Federal Savings & Loan Associations, the Polish Roman Catholic Union and different similar organizations. He had done business with the P. R. C. U. prior to 1949 for the purpose of obtaining mortgage loans. His negotiations since 1947 were primarily with Joseph Marzec. The original application was sent by mail to the treasurer's office, and a copy was sent to Mr. Marzec. He never paid any commission or brokerage to the Polish Roman Catholic Union to obtain a mortgage. He paid commission to obtain mortgages from the P. R. C. U. to Joe Marzec. He first began paying these commissions in about the middle of 1947. In every loan company that

he made loans in, he usually paid commissions. In certain cases they are paid to an individual, and in certain cases they are paid to the broker or to the house. Mr. Marzec was not a loan company; he was a broker who consummated the deals. The witness understood that Mr. Marzec was representing him the P. R. C. U. and he knew that Mr. Marzec was licensed as a real estate broker. The commissions were paid to him as such real estate broker. He began making payments to Mr. Marzec in 1947 and the payments continued through the years 1949 and 1950. He paid commissions in connection with each real estate mortgage loan he negotiated during the year 1949, and also submitted applications during that year to the P. R. C. U. which were rejected. The commissions were not involved on the rejected loans. Mr. Marzec was to deliver a check to the escrow department of the Chicago Title & Trust when the title was clear. When the check was deposited, the witness was to pay a commission of four per cent to Mr. Marzec. On some loans they had to negotiate, and Marzec only got three per cent on it. On some loans, the witness paid five per cent. The percentage of commission was open for negotiation, depending upon the loan. The variation depended upon the location and the age of the building. The more desirable property would require a lower commission. The main factor was location.

154 (Colloquy between court and counsel ensued at this point, which is set out verbatim.)

"By Mr. Struett: If your Honor please, this is a rather important matter, and there is a tremendous volume of stuff. I think if we could adjourn, we could straighten it out and save considerable time, because this matter is very important to our side of the case as well as the Government's, and I want to shorten it as much as possible.

"If it is convenient for the Court, I would like to adjourn. Maybe we can agree on some of this stuff in the meantime.

155 "By Mr. Manion: The problem is essentially this: Mr. Miller has several transactions to testify to involving a great number of checks. Mr. Struett has now indicated to me that he might agree to submit one of the summaries in lieu of submitting the checks, which would expedite the testimony.

"By the Court: Very well; I will be glad if you can shorten it. We will recess at this time until 10:00 o'clock tomorrow morning.

"By Mr. Struett: May I say a word to your Honor? I just hate to do this, but I have been going a little heavy for me, and I don't feel too good. I don't want to burden you with my personal things. I have done the best I can.

"If I can have a little more recess at lunch—I will do the best I can, Judge. I just am not what I used to be.

"By the Court: Neither am I.

156 "By Mr. Struett: I have a heart condition, and I have an ulcer and I had to get milk for my ulcer. I want to go along with you, but I can't just quite take the pressure I used to.

"By the Court: We have to get along.

"By Mr. Struett: I have not delayed you much, have I?

"By the Court: No.

"By Mr. Struett: I won't.

"By the Court: The ladies and gentlemen in the jury box, they have more important business to attend to elsewhere. We have to get through with them.

"By Mr. Struett: If it could be 10:30, it would be helpful to me.

"By the Court: No—10:00 to 12:30 and 2:00 to 4:30. I have always done that except when I ran from 10:00 to 1:00 and from 2:00 to 5:00, as you know very well.

"By Mr. Struett: I will do the best I can, Judge."

157 (Proceedings of February 6, 1957. Testimony of Max E. Miller, resumed.)

159–173 Government's Exhibits 24-A through 24-R are checks issued by the witness to pay brokerage commission to Mr. Marzec during the calendar year 1949. Marzec used to come to he witness' office every Saturday for the checks. Government's Exhibit 25-A through 25-Z are checks paid for the same purpose and in the same manner in the year 1949. Some of the checks were payable to Joseph Marzec and others to cash; Marsec never stated the reason why he wanted them in cash.

Government's Exhibit 26 was a check stub for One thousand dollars. When Marzec came over, he wouldn't accept the check. Miller issued a check to his son for One thousand dollars. The son cashed the check, and Miller brought the proceeds to Marzec for a mortgage on Greenwood Avenue. There was another check issued to Marzec in connection with that loan, the stub entry for Check No. 1185 in the amount of One hundred seventy dollars fifty cents as commission to Mr. Marzec on the same property.

The witness had occasion to obtain a first real estate mortgage loan from the P. R. C. U. in July, 1950 on property at 4414-16 Malden Avenue. This deal was closed with Mr. Sam Server through the Chicago Title & Trust Company. A commission was paid to Mr. Marzec in connection with that property. The witness did not recall how the commission was paid.

During the year 1950, the witness arranged for a first mortgage loan from the P. R. C. U. on the property located at 7200-08 South Michigan Avenue. The witness made arrangements with the Chicago Title & Trust Company to pay the commission direct to Mr. Marzec.

In addition, the witness and Marzec had acquired property toegther during the period 1949-1950, title being held in the Cosmopolitan National Bank as trustee. The wit-

ness made the arrangements for the mortgages on these properties, and had an interest in property acquired by a group of attorneys which was mortgaged with the P.R.C.U. The commissions in 1948, 1949 and 1950 were never less than four points. There was an exceptional loan for Kahn and Levinkind, which was a three point. The commission did not vary as to whether or not Mr. Marzec was participating in the equity of the property purchased. It did not vary if the witness was purchasing it for his own interest. The commissions were paid to Mr. Marzec during 1949 and 1950. The witness made no payments to anyone else.

(Whereupon the following colloquy ensued.)

173 "By Mr. Struett: May we have a recess, your Honor, for fifteen minutes? We will try to straighten this out.

"By the Court: How long will it take you?

"By Mr. Struett: There are about thirty checks that he wants to check with his list.

174 "By the Court: Well, tell me how long.

"By Mr. Struett: I will say twenty minutes and we will have them ready.

"By the Court: See if you can't make it fifteen minutes. We want to get along as fast as we can.

"Take a short recess, ladies and gentlemen."

175-207 *Cross Examination.*

The witness testified that the check for One thousand dollars shown in government's Exhibit 26 was where the witness had brought the check to the Polish Roman Catholic Union on the acquisition of the mortgage from the Continental Bank on Greenwood Avenue. Mr. Marzec came out and said the boss will not take it. He said that the witness would have to go to work and get some cash. The

witness sent his boy to the Belmont National Bank and he cashed his own check. He brought the witness One thousand dollars in one hundred dollar bills in a Belmont National Bank envelope, which the witness gave to Mr. Brandt. The witness did not see Marzec hand it to Mr. Brandt, but Marzec went into the other office. The original check was destroyed when Marzec wouldn't accept it. He told the investigating agents about this. Government's Exhibt 24-A was a check payable to Mr. Marzec for One thousand two hundred fifty dollars on 3451 Grenshaw Avenue. The witness did not hold this property in trust. It was held to Joe Marzec, one-third. Defendant's exhibit 7 for identification purports to be a trust agreement covering this property. It was dated November 2, 1948. Government's Exhibit 24-A was the commission paid on that property and title was in the Land Trust in the names of Joseph Marzec, Dorothy E. Stevens and Max E. Miller. The witness did not know Dorothy E. Stevens. He was told that she was the daughter of Mr. Brandt. The witness paid her a part of the distribution on that, One thousand five hundred forty-three dollars thirty-six cents. In addition to business dealings with Marzec, the witness had business dealings with Stanley Kusper. The deal was to be on a fifty-fifty basis, Joe Marzec and himself, but when they O.K.'d the loan the witness could not get the deal unless Mr. Kusper received one-quarter interest. He put his money in just the same as Marzec and the witness, but he refused to issue the commission. He said Mr. Marzec—he would get one-quarter. That was in 1948.

The witness said his feelings were primarily with Mr. Marzec with reference to loans. He never discussed loans with anyone else, but when he was at the United States Attorney's Office with Mr. Rieger, Mr. Struett and Mr. Tobin, he said that he told the agents at the beginning of the investigation that Marzec was only a collector. The wit-

ness made that clear when the agents came in the first time.

He dealt with the Union in 1941, and generally the loans had to be approved by the treasurer, backed up by an independent appraiser, and the legal details taken care of by the attorney.

Defendant's Exhibt 9 is a list of the commissions paid out to Mr. Marzec; it is similar to the one the witness gave the agents when they first came to him. About two weeks afterward the witness had a conversation with Special Agent Wolfe of the Intelligence Unit about the list which the witness had given to Wolfe or Oscheroff being out in open circulation.

(Whereupon the following proceedings occurred.)

187 "By Mr. Manion: I object to this, your Honor. I don't see how it is pertinent to the issues in this case. It is far beyond the scope of the direct examination. I hesitated to object to this entire line of cross examination, but I believe it is a little far afield and going into areas that are not pertinent to the case.

"By the Court: I don't see the materiality of this question.

"By Mr. Struett: It will tie up, the relationship here of this man, very closely, your Honor, when I am through and I assure you that or I wouldn't be asking these questions. I am saying it in all sincerity.

"By the Court: I don't see the materiality here in your question.

"By Mr. Struett: It is leading up to an overall picture here just as I represented to this jury yesterday. I am going to bring that out and develop this relationship of this man to this situation, what the true situation was. Everything here is important. It will all jell in just like in a crossword puzzle. I can assure you of that, your

Honor. I am not asking this just to be asking questions. I promise you that, and I make it in all sincerity.

"By the Court: Proceed as judiciously as possible.

By Mr. Struett:

Q. What was that conversation, to the best of your recollection?

189 "A. I talked to Mr. Wolfe about the list that I submitted to him which was being peddled around in the saloons over on LaSalle Street with a fellow by the name of Nicholas.

"Q. And what did he tell you, then?

"A. He couldn't understand it, what had happened there, but I threatened to go to the intelligence department because this was a document which was entrusted to the intelligence department confidentially and I didn't want my list to be peddled around in saloons in the Bismarck Hotel.

190 "Q. Did he afterwards call you and say that the document had been put back?

"A. Yes."

In September of 1954 the witness had a conversation with Mr. Wolfe concerning the return of certain checks (made out in the name of Repsuk) in which Mr. Wolfe told the witness that he had delivered the checks to Mr. Rieger's office.

Defendant's Exhibit 10, the client's copy of the income tax return on the property at 3449-55 West Grenshaw, the building that Mr. Brandt's daughter had one-third interest in, was prepared by Arthur Goldberg for the witness. Osheroff was an employee of Arthur Goldberg. He was the accountant that did the work in the witness' office. Osheroff was a revenue agent who worked on this case.

The witness had been interested in a building at 2729-37 West Leland Avenue. This was a twelve flat building.

(Thereupon the following proceedings took place.)

193 Q. There was a party by the name of Tyrrell Richardson who was an attorney who wanted to make a loan on that building, isn't that correct?

A. No, sir.

By Mr. Manion: Your Honor, I must again object to this line of questioning.

By the Witness:

A. No, sir.

By the Court: I don't see the relevancy here of these
194 questions you are asking and the answers you are getting.

By Mr. Struett: Judge, I will give it this way: Tyrrell Richardson was a lawyer that they got for Marzec, as I said yesterday, and I will cover it now. Then, the next thing you know, Richardson is negotiating a loan and Osheroff is making the payments on the building. If that isn't relevant in my theory of the case, I don't see what it is.

By the Court: I don't see the relevancy.

By Mr. Struett: I am trying to make it as short as possible.

By the Court: Going back to your question, you asked who this man was who prepared this income tax; he was an agent.

By Mr. Struett: And then he went to work for Mr. Miller.

By the Witness: He didn't go to work for me.

By the Court: No. He went to work for an auditor. I don't see the relevancy. I wish you would stay on the
195 lawsuit you are trying. It is important.

By Mr. Struett: I am staying on the lawsuit.

196 By Mr. Struett:

Q. Now, what do you know about that building? Make it fast.

A. That building I have acquired with George Stucker's

real estate office at 5018 North Sheridan Road and I made the mortgage myself with the P. R. C. U. I held the building for about two or three years when Osheroff worked for Goldberg. He says he had a little money he would like to buy a piece of property with and I sold the property to Osheroff.

Q. And then Mr. Osheroff made the payments?

A. Mr. Osheroff made the payments. He took over the beneficiary certificate on the trust.

Government's Exhibits 19-A and 19-C are trust deed and escrow agreement with the Chicago Title & Trust Company covering the property at 7202-08 South Michigan. There was a deposit of Two thousand six hundred dollars there to Joe Marzec. The witness set up the escrow, knew that the provision concerning the payment of the Two thousand six hundred dollars was there. He discussed it with Mr. Marzec, but not before it went in. He knew the agreement with Mr. Marzec was to pay him four points, but when he left for Mayo Brothers, Mr. Marzec wanted a check so the witness made it directly payable to him.

(Whereupon the following proceedings occurred.)

199 Q. Now, Mr. Miller, you suggested to Mr. Marzec back in 1951, I believe it was, that he employ an attorney, did you not?

A. Pardon me?

Q. You suggested to Mr. Marzec that he employ an attorney?

A. Yes, sir.

Q. And you recommended an attorney?

A. Yes, sir.

Q. And who was it?

A. It was a fellow by the name of Tyrrell Richardson.

Q. How long had you known Mr. Tyrrell Richardson?

A. Well,—

By Mr. Manion: Your Honor, I will object to it not only

because he is again going far afield in this case, but it does not come within the scope of the direct examination.

By the Court: Sustained.

By Mr. Manion: Not pertinent to the issue.

By the Court: Sustained.

By Mr. Struett:

200 Q. Now, I show you defendant's Exhibit 11 marked for identification, and ask you what that is?

A. Well, this is an affidavit that I made to Mr. Wolfe, that brought it in. I think that is the affidavit. I think I have got a copy here.

Q. You gave that to Mr. Wolfe, did you?

A. Yes, sir, of the Intelligence Department.

Q. I read you the second paragraph thereof.

By Mr. Manion: Your Honor, I would object to this procedure, if he is intending to impeach the witness on the basis of the affidavit.

By Mr. Struett: I just want to find out the witness did here.

By Mr. Manion: If he wants to offer this in evidence, I believe he should reserve it for his case.

By the Court: Yes, if you want to offer it in evidence. If you want to impeach him, it is another thing.

By Mr. Struett: He said he dealt exclusively with Mr. Marzec and he said—

201 By the Court: He said he made his loan through Marzec.

By Mr. Struett: Well, all right.

The witness testified that he had never spoken to Brandt during all of his administration. The only one he ever discussed loans with was Mr. Marzec. He had known Special Agent Wolfe from the time he came in to make the investigation. This was the first time that he had ever met Wolfe. The first time he had met Revenue Agent Osheroff was when he came in with Mr. Wolfe.

(Whereupon the following proceedings took place.)

204 By Mr. Struett: I would like about a ten minute recess to talk to my client to see if there are any other questions.

By the Witness: I came down sick.

By the Court: You have had about thirty minutes already.

By Mr. Struett: I understand that.

By the Court: Take him into the jury room if you want to talk to him and come back.

The witness then testified that he never in his life made out a check to Blanche Wiersbicki (Kusper's wife's maiden name) except a Fifty dollar check for the poor.

207-211 *Redirect Examination.*

The witness had spoken to Mr. Brandt and Mr. Kusper but had never discussed any business with them. In all the years he made loans, he had never discussed anything with the officers in relation to them. Even applications were not discussed with the officers but were sent through the United States Mail with a copy to Mr. Marzec. Government's Exhibit 29 is the type of application which the witness submitted.

The sale to Osheroff, took place in 1953. At that time Osheroff had been out of the United States Revenue Service for two or three years. The witness gave him the commission because there was no one involved. At the time the witness prepared government's Exhibit 29, Osheroff was employed by Arthur Goldberg. The witness had never seen Mr. Osheroff until he came in to examine the books. During the time he was working on this case, Osheroff did no work for the witness. The work he did for the witness came after he left the Revenue Service.

Government's Exhibit 26 is a check stub record of Mr.

Max Miller, entry 1168, May 29, 1950, relates to a check drawn to the order of Joseph R. Miller, exchange for our checks remortgage P. R. C. U., amount this check One Thousand dollars.

Entry 1185 is dated June 11, 1950, to the order of cash, re 4361 Grenshaw to Marzec, One hundred seventy dollars and fifty cents.

J. CUTLER SHELDON, being first duly sworn, testified on behalf of the Government:

212-217 *Direct Examination.*

The witness, a lawyer, testified that he had occasion to negotiate mortgage loans with the P. R. C. U. in March or April of 1949 on property at 3656 Polk Street. He dealt with Mr. Marzec. He first met Marzec in the latter part of 1949 or early part of 1950 at the offices of the P. R. C. U. He told Mr. Marzec that he wanted to make loans from time to time and asked whether they could be made. Mr. Marzec said they could be made. The witness asked what the commission would be, and Marzec told him it would be four points, payable in cash at the time he received the commitment.

The Witness then described the making of six loans during the period involved, paying four per cent commission in cash in each instance to Mr. Marzec personally. The witness stated he had never delivered commissions to anyone other than Mr. Marzec at the P. R. C. U.

218 *Cross-Examination.*

Mr. Marzac did not tell him why he wanted this money in cash and the witness did not ask him. The witness does not recall having told anyone that he told the investigating agents that Mr. Marzec was the collector for this money.

HENRY S. BANACH, being first duly sworn, testified on behalf of the Government:

219-230 *Direct Examination.*

The witness stated that he was a mortgage banker. He did practically all of his business as a mortgage banker during the years 1949 and 1950 with the Polish Roman Catholic Union. He first submitted an application for a mortgage loan to the P. R. C. U. in 1948. His applications had generally been approved with the exception of a few during the year 1948. He submitted his applications to the treasurer, Brandt. All of his dealings were through Mr. Marzec. Marzec would let the witness know if an application had been approved and tell the witness what the commission was going to be. The commission was paid to Mr. Marzec. He paid commissions to no one else at the Polish Roman Catholic Union and had no direct dealings with Mr. Brandt, Mr. Sobieraj or Mr. Kusper with respect to commissions. In the beginning of the year 1949, the witness paid commissions by checks to the order of Mr. Marzec. Later Mr. Marzec requested that the checks be payable to cash, and later, to him in cash. He paid money in cash in the latter part of his dealings. That was the only way the witness could do business with him. The witness obtained the cash by issuing a check for the amount he requested. The witness took it to his bank, cashed it, put the money in an envelope and handed it to Mr. Marzec. After the check came through, the witness made entries on the stubs and a memorandum as to whom the money went and for what purposes. The entries were made by the auditor, who happens to be his wife. Government's Exhibits 27-A through 27-OOO are a group of checks made out in Mrs. Banach's handwriting. The notations on the reverse side of the checks were made when the checks

cleared through the bank and were received by him. This was done at the request of his auditor, Samuelson. Government's Exhibit 28 is a group of check stubs from a regular three page commercial check book kept by the witness. Entries were made by the witness' wife, employed as his auditor, and the records kept for income tax purposes. The sheet of stationery attached to government's Exhibit 27-GG is a file copy of a letter with regard to the check to which it is attached. Government's Exhibit 20-A is a triplicate of the deposit check; he deposited government's Exhibit 27-GG in the bank account of Mr. Marzec at the Pioneer Trust & Savings Bank.

With respect to government's Exhibit 27-AAA, that money was paid to Mr. Marzec for a loan on 1522 South Springfield and 3850-54 West 13th Street. The loan was for Twenty-five thousand, but the Union accepted only Twenty-two thousand five hundred, and Marzec returned One Hundred dollars in cash to us. No part of the proceeds of any other checks were ever refunded by Mr. Marzec.

The witness usually paid Mr. Marzec before the mortgage proceeds had been paid out of the P. R. C. U. Usually as soon as the applications had been approved but before the mortgage papers were drawn. Some of the witness' applications were rejected. The witness testified that he did not have to pay Mr. Marzec when a mortgage application was rejected because payment was made when Marzec told the witness the mortgage had been approved. The witness did not always receive a written commitment in connection with these mortgages, but when he received them, they were signed by Mr. Brandt and mailed to the witness or delivered to him by Mr. Marzec.

236-240 (Thereupon the following proceedings occurred.)

By Mr. Manion: We have no further questions of this witness, your Honor. We will, however, at this

time, offer in evidence Government's Exhibits 20 and 20-A which are the ledger card and the deposit slip relating to the commercial account of Joseph T. Marnee at the Pioneer Trust & Savings Bank which were identified by our stipulation yesterday, and Government's Exhibit 27-A, lettered consecutively through the alphabet, through 27-OOO for identification, both inclusive.

By Mr. Struett: Your Honor, I will have my man check them during the noon hour, if we may have until 2:30.

By the Court: Oh, no, no. Let us get along.

By Mr. Struett: It will take a half an hour to three-quarters of an hour to check those.

237 By the Court: Very well. That will give you three-quarters of an hour for lunch. We have to get along with this case.

I will give you an hour and 38 minutes. 2:00 o'clock, ladies and gentlemen. * * *

238 By Mr. Struett: If your Honor please, may I say something? I don't like to say this to you, but I want you to know we took very little time off for lunch today,

239 and we were back here in a hurry. We were back at twenty-five to, and went out a quarter after or whenever you adjourned, or 1:00 o'clock. I am doing the very best I can, or Mr. Marnee is. I haven't had a chance to talk to him yet. He is checking that against his record.

By the Court: Hurry him up.

(Thereupon there was an interruption in the proceedings.)

By the Court: Will you bring the jury in now?

By Mr. Struett: There is one check I think covering a refund where they reduced the mortgage.

By the Court: Yes, $100.00.

By Mr. Struett: There is another for $75.00 in there.

By Mr. Manion: We have completed our direct examination, your Honor.

(Thereupon the following proceedings were had in open court, in the presence and hearing of the jury:)

240 By Mr. Manion: Our offer of these exhibits is pending.

By the Court: Proceed, Mr. Struett.

Cross-Examination.

Government's Exhibit 27-A is a check for Seventy-five dollars, dated September 8, 1949. It was issued to cover an alleged shortage on a commission on a purchase of a property at the southwest corner of Blackstone and Marquette Road, back in 1949. The witness reported the payments to the government and took them as a deduction. He gave the government and Mr. Marzec a form 1099. He received a letter back to the effect that Mr. Marzec had not received this money. He gave the letter to Mr. Manion.

Under questioning by Mr. Manion, the witness testified that he gave a copy of the letter to the government yesterday. He delivered the letter to the same man to whom he gave his checks.

Defendant's Exhibits 12, 13 and 14 for identification consisted of a letter from Mr. Wilson, two copies of letters from his files together with a 1099 form. The witness referred the letter to his auditor, Mr. Samuels, who answered it for him. The copy of the answer went to Mr. Wilson.

248 Mr. Manion stated to the jury that the two entries appearing on government's Exhibit 28 are the check stub entries, No. 6524, dated May 19, 1950, made to cash, four per cent commission, Joseph T. Marzec, in the amount of twenty-two thousand dollar loan by the P. R. C. U. on 6110 South Greenwood. The check was in the amount of Eight hundred eighty dollars, and entry No. 6525, May 19, 1950, to cash, for four per cent commission to Joseph T.

Marzec, Twenty-two thousand five hundred dollar loan on 6345-47 South Greenwood Avenue. The amount of the check is Nine hundred dollars.

ARTHUR WILSON, being first duly sworn, testified on behalf of the government:

250-269 *Direct Examination.*

The witness stated he was a certified public accountant, registered in the State of Illinois. He was acquainted with the defendant and was first hired by him in the latter part of 1950 as an auditor or certified public accountant. Mr. Tyrrell Richardson first referred Mr. Wilson to Mr. Marzec. Mr. Richardson is an attorney at law, and the witness believed that Richardson represented Marzec at that time.

He first met Marzec when he received a call from Richardson and went to Mr. Marzec's house on West Barry Avenue. The witness was retained by Mr. Marzec because the latter was being investigated for income tax. The witness was informed by Mr. Marzec that his books and records represented or supported the tax return that he had filed and that he had no other income. Several days afterwards, the witness took his records and bank accounts. At that time, the witness' office only had the 1949 return. They compared the 1949 return and Marzec's books and records; the latter were substantially in agreement with the return. The witness interrogated Mr. Marzec as to whether he had received any additional income and was told that his total income was included in the return filed. Marzec told the witness that his return was substantially correct as to deductions as well as to income. Thereafter, the witness examined Marzec's books and records for the calendar year 1950 and compared them with Marzec's 1950 return. The witness did not prepare the 1950 return. Marzec's books and records with respect to commissions

received and paid during the calendar year corresponded with the original tax return.

Marzec showed the witness the 1099 form (government's Exhibit 30) in which Marzec was shown as having received commissions of Thirty-nine thousand dollars that were not included on his books. Marzec told the witness that he had not received the money and the witness wrote a letter to Mr. Banach in which the receipt of the money was denied, sending a copy of that letter to the Treasury Department's Processing Division at Kansas City, Missouri. The statements in this letter (defendant's Exhibit 12) were based on the statements of Mr. Marzec.

Later, the witness received a letter from another accountant representing Mr. Banach, stating that Mr. Banach had evidence that he paid the money to Mr. Marzec. Government's Exhibit 32 is a letter received from Mr. Samuels. The witness then called Mr. Samuels and met him at Mr. Banach's office for the purpose of seeing their records. This took place subsequent to February of 1951 and prior to September. Government's Exhibit 3, the amended individual income tax return for Mr. Joseph T. Marzec and Florence Marzec for the calendar year 1951, is an amended return, having all of the same facts as the original return but one additional source of income stated. This source was the commission of Thirty-nine thousand eight hundred twenty dollars shown on page 2, Schedule G and is the exact amount shown in the return filed by Mr. Banach. There were no additional expenses or deductions in connection with the commission business included in the preparation of government's Exhibit 3 in evidence other than those which appear in government's Exhibit 2. The witness examined Mr. Banach's records prior to preparation of government's Exhibit 3, filed on or about June 9, 1951, and Marzec denied receiving additional income from Mr. Banach up to the time of the filing of government's

Exhibit 3. The signature of Mr. Wilson's firm was omitted from this return by inadvertence because it is common practice for any return prepared in the office to have the firm name typed on that line. The witness did not recall any specific reason for not signing the return. Prior to filing, the witness interrogated Marzec about other income received by him.

The witness discontinued his representation of Mr. Marzec shortly after September of 1952. Marzec never admitted that he received the income which Banach attributed to him nor having received a bank deposit alleged to have been made by Mr. Banach to Marzec's account.

The witness was present in September 12, 1952 at an informal conference held in the office of the Penal Division of the Internal Revenue Service at Chicago, Illinois. He was representing Mr. Marzec in company with Mr. Richardson and Mr. Marzec. The witness did not recall who represented the Internal Revenue Service. There had been two different special agents working on the case. He thinks there was a Mr. DeWand and maybe Mr. Smith. The conference was requested by the witness on behalf of Mr. Marzec, and the testimony by Mr. Marzec, the witness and Mr. Richardson was volunteered at that time. The statements made by the witness at that conference were true and correct to the best of the witness' knowledge at that time. In response to a question as to what effect, if any, did that conference have on the witness' decision to continue representing Mr. Marzec in these matters, the witness stated, "Well, we were discouraged because we felt we were up against a brick wall."

269-287 *Cross-Examination.*

The witness had no work sheets on the work he did for Marzec because all he did was to compare the records Marzec kept with the items that were in Marzec's return. The witness went through Marzec's cancelled checks and his ledger.

At the time the witness wrote Government's Exhibit 30, the witness had examined the form 1099 for 1950. Marzec stated that he did not get this money at all. Defendant's Exhibit 30 was written upon the representation of Mr. Marzec. Thereafter the following occurred:

Q. You wrote this letter addressed to Mr. Henry S. Banach and it says this:

273 "Your letter addressed to our client, Mr. Henry S. Banach, was forwarded to us for attention. We would
274 like you to know Mr. Banach had discussed with us the payments during the course of the year to Mr. Joseph T. Marzec. Mr. Banach told us in the first instance that Mr. Marzec wanted cash as his commissions on the mortgages which he placed before Mr. Banach. We told Mr. Banach at that time that if Mr. Marzec wanted cash and if it was necessary for him to do business with him that he note on each check payable to cash the proceeds going to Mr. Marzec on the check stubs. We also advised him that at the end of the year he had to file an information form with the Treasury Department.

"Mr. Banach has complied with all the necessary rules and regulations. The fact that Mr. Marzec denies having business dealings with Mr. Banach can be disproven without any trouble. As a matter of fact, we too are writing to the Commissioner of Internal Revenue advising him of your letter to our client, at the
275 same time letting him know our circumstances. We are writing you this letter because the amount received by Mr. Marzec from Mr. Banach as commissions is taxable income to him."

Now, did you ever get a more straight, forthright clear letter from a firm of certified public accountants as to a true situation. Did you ever in your life?

A. I was working for Mr. Marzec.

Q. You are Mr. Marzec's accountant?

A. That is right.

Q. Could you have gotten anything plainer, truer, or anything else?

A. My client told me—

Q. Let's just take your word for it. He told you he had never received it, but you certainly had pretty strong evidence that there was some proof, didn't you?

A. Yes, sir.

Q. Now, when did you go over and talk to Mr. Banach?

A. As soon as convenient.

Q. Was it convenient in another two days or the next week?

276 A. Within the next two or three weeks, or as soon as Mr. Samuels could make the arrangement with Mr. Banach.

Q. So that was within the next two or three weeks?

A. That is right.

Q. It wasn't any longer than that?

A. I don't believe so.

Q. You were satisfied beyond any question of doubt, weren't you, as to, let us say, a scientific certainty? Let's put it that way.

A. May I refer you to the letter in which Banach's accountant states these checks were mostly drawn to cash?

Q. Yes.

A. And the only evidence that was going to be presented would be the statement of Banach versus the statement of Marzec, because there wasn't any written evidence.

277 Q. You were not too sure about it?

A. I certainly wasn't. My client was denying it.

Q. Let's get your mental reaction.

A. The only basis of defense my client has is to prove this report. All of the income I mean, and if he is stating somebody is accusing him of receiving income he is not getting, and I am trying to protect him, I want to make sure they are not going to be able to prove he did get it.

Q. Look on your amended return in his behalf, reporting all that income. You looked at that, didn't you?

A. That's right.

Q. You must have been sure in your own mind then, or you would not have prepared the return?

A. I don't know how many meetings later with Mr. Marzec this decision was arrived at. I don't know how much later that was. We have here a letter in the file which states this return was filed somewhere late in the summer of 1951.

Q. June 29th?

A. Well, I don't know the exact date, but it was
278 sometime not immediately after my visit to Banach, but sometime later, and at the time the return is amended and filed we had the benefit of advice from his attorney, and probably some persuasion put upon him or something has to be done about that item, and at that time the amended return was prepared.

Q. All right. Let's put it another way. Did he admit by June 29, 1951 that he got this twenty-nine to thirty-nine odd thousand dollars?

A. He does by signing that.

Q. I mean, did he admit it to you?

A. That's right, he had to, because it is in the return.

Q. I don't mean the return. Did he ever say, yes, I got the $29,000.00?

A. I don't think he ever said that, to tell you the truth.

Q. He didn't say that?

A. No, I don't think he did.

Q. Let's be frank with you. February 28th, to give you

a month to see Banach. Then you had some doubt in your mind whether this man got the $39,000.00?

A. In the face of the letter yes.

On April 12, 1951, the witness was at the Intelligence Unit, representing Marzec. Also present were Mr. Marzec, Mr. Osheroff, Mr. Conrad, the Internal Revenue Agents and Mr. Johnson, a Special Agent, who was interrogating.

(Thereupon counsel read the following from defendant's Exhibit 15-B).

281 Mr. Marzec was asked:

"Q. Have you any transaction with Henry Banach?

"A. Prior to February 4, 1951, I received a notice from Henry S. Banach regarding some commissions paid."

That is form 1099.

"This notice was received on form 1099. Subsequently it was returned to Banach by my representative, Arthur Wilson, with a letter stating no money was paid on any loans or commissions. I also informed through my representatives to the Commissioner of Internal Revenue I had not received the claimed commissions nor had I rendered any service on behalf of Banach for which any payments should be made."

282 That answer was made in your presence?

A. That is right.

Q. You represented this man?

A. That is what I said, sir.

Q. Then they asked Mr. Marzec if he had anything further to say, and then this:

"Mr. Wilson: Is there anything else or what do you care to say?

"The only statement I would like to make to the Banach matter, my client informed me of this 1099, and we took such steps as we thought proper to bring it to the attention of the Government."

That is your statement?

A. That's right.

Q. Now, do you think that you on behalf of this man, with the knowledge you then had, properly represented him over there?

By Mr. Manion: I object.

By the Court: Sustained.

By Mr. Struett:

Q. Do you think your statement or his statement was true?

By Mr. Manion: I object to that as calling for specu-
283 lation.

By the Court: He may answer.

By the Witness:

A. Now, to what statement do you refer?

By Mr. Struett:

Q. His statement to the Intelligence Unit on April 12, 1951, and your statement to him.

A. I think that at the time the statement was made I was justified in making it, because up to that time even though I had visited Banach's office I had not seen enough evidence nor did I make an audit of Banach's books. I was only acquainted with the case that gave rise to questioning my client. I was not at Banach's office more than half an hour, at the most. I explained what my purpose was, and they showed me a cash book in which they had written out "Joseph T. Marzec" so much money. That still didn't prove he had gotten it. They could have built up a tax fraud just as he could have, but denied it.

The only thing that came up that gave any evidence whether my client was going to be licked, they showed
284 me two checks made payable to Joseph T. Marzec and said that was his endorsement. I had no way, in other words, other than that of knowing. The mere passage of

purported cash, I mean. I had as much reason to believe Marzec as I had to believe Banach.

Q. Wouldn't it be better—I am just asking you this question as a certified public accountant continuously representing taxpayers before the tax bodies, of saying, "We have got that and we send it in" wouldn't it be the proper representation for you to have said that?

By Mr. Manion: I object to that, your Honor.

By the Witness:

A. Personally, I think—

By the Court: Sustained.

By the Witness:

A. That he got good representation.

By Mr. Struett:

Q. Let me ask you this: Did you ever ask Marzec if he got any other cash?

A. Yes.

Q. Did he ever tell you that he did?

A. No, except a transaction with Mr. Max Miller
285 was mentioned, some of which was reported in the return, and at Mr. Marzec's request we visited the office of Mr. Max Miller and attempted to trace the entries on Miller's records against the entries made on Marzec's.

The witness never asked Marzec how the business was run at the P. R. C. U. or how he happened to be getting Thirty-nine thousand dollars when he was employed at the Union. He did not ask Marzec whether the latter shared commissions with anyone. When the witness had Samuels letter and his conversations with Marzec, he could not make up his mind that there was cash involved. The witness might have discussed the question of cash being hard to trace in conference with Marzec and his attorney.

287–289 *Redirect Examination.*

In a conference with the Regional Counsel's Office, the witness testified that he had seen the two checks and duplicate deposit ticket for the sum of One thousand nine hundred fifty dollars deposited to Marzec's account. That admission was, technically, for the purpose of the conference. Marzec had not admitted the receipt of that money at that time.

289 *Recross Examination.*

The witness was not certain that this was a final conversation with the Internal Revenue Service to determine whether or not Mr. Marzec's case should be sent to justice with a prosecution recommendation. Shortly after the conference they received a notice that the case had been forwarded to the Justice Department. He does not have a copy of the letter in his file where he advised Mr. Marzec that the notification (defendant's Exhibits 16 and 16-A) had been r. eived.

293 *Redirect Examination.*

The witness was certain that he informed Mr. Ma ec that the file had been forwarded to the Departmen. of Justice when he received defendant's Exhibit 16. This was the usual procedure.

Recross Examination.

The witness has no record of having notified him. Mr. Richardson and he physically did nothing on Marzec's behalf in this case after the conference in Mr. King's office on September 12, 1950.

BRUNO L. SOBIERAJ, having been first duly sworn, testified on behalf of the government:

235–309 *Direct Examination.*

The witness is a real estate appraiser and broker. He was a defendant in this case and requested to testify at this time. He had entered a plea of guilty to one count of this indictment.

The witness first became acquainted with Joseph Marzec about 1947. During the year 1947 and subsequently, the witness received commissions from Mr. Marzec in connection with mortgage applications made by various real estate brokers to the Polish Roman Catholic Union for mortgages Mr. Sobieraj appraised the properties. He prepared an appraisal for each of these properties as an outside appraiser.

The witness had heard that there were commissions being passed. He asked for some of it, and through arrangements with Mr. Marzec, he received part of the commission. There was no definite agreement with regard to receiving part of these commissions. It was based, all around, anywhere from one point, one-half a point, from half to one point on a loan. As the witness received commissions from Mr. Marzec, they were reported on his daily ledger which was kept by Mrs. Stanczewski. She was a partner in the firm of W. Stanczewski & Company, the witness' company. Mrs. Stanczewski and the witness were co-partners in the firm of W. Stanczewski & Company, a real estate sales and appraising firm. This occurred during the time Mr. Brandt was treasurer. The witness made the appraisal of the property, but Marzec was getting a commission "so I thought I could get part of it myself." The witness' agreement with Marzec was that after the loan would go through, Marzec would give the witness a break on the commission of from one-half point to one point. The witness did not

get a commission on each and every loan; the standard that determined the loans upon which the witness received commissions was whether or not it was Marzec's loan. Otherwise, the witness received an appraisal fee of from fifteen to fifty dollars from the Polish Roman Catholic Union.

The payments received from Mr. Marzec were some in cash and some by check. They were all recorded in the daily cash book by Mrs. Stanczewski who was charged with keeping all of the cash records and cash receipts, including the witness' personal receipts as well as the company's. Everything was recorded in the book. Government's Exhibit 33 was identified as the witness' office book. The entires in it were made on or about the date they bear in the regular course of business. All cash receipts of W. Stanczewski, or from Mr. Marzec, or from any other source were recorded in this book. The witness did not report the cash received by him from Mr. Marzec during the years 1949 and 1950 for income tax purposes. Whenever Marzec paid in cash, he would withhold about twenty per cent, and the witness testified that he had a conversation with Marzec concerning reporting of these cash receipts for income tax purposes in which the latter said, with respect to the twenty per cent, "That is for income tax; I am paying in income tax on this." He told the witness that he was going to pay the income tax for those funds. He received no cash from Mr. Marzec during the years 1949 and 1950 which is not reported on government's Exhibit 33 for identification.

In government's Exhibit 33, there is an entry for June 17, 1950 of commissions paid of Eight hundred dollars. There is also a notation, "Income tax $160.00". That entry indicates Marzec withheld One hundred sixty dollars for the income tax he was to pay. This was pursuant to the witness' agreement with Marzec. The witness reported for income tax purposes all checks he received from Mr.

Marzec in payment of commissions and received a form 1099 for reporting. None of the cash was included in the form 1099. The witness testified that he realized that he should have reported the cash received by him for income tax purposes even though he had this agreement with Mr. Marzec. The witness relied on his agreement with Mr. Marzec in not reporting his tax. The total amount of commissions paid the witness by Mr. Marzec during the calendar years 1949 and 1950 are in the books.

The entry in the book for May 27, 1950 showing an item "Director's $105.00," was withheld for taxes. The witness did not pay that to the directors. That was withheld from the total, six twenty. Mr. Marzec never gave the witness any cash to be paid to Mr. Brandt or Mr. Kusper. All cash from Mr. Marzec delivered to the witness was for himself and for Mrs. Stanczewski.

309-322 *Cross-Examination.*

The witness signed an affidavit to the government that he received money from Marzec. There was no mention of cash. The statement in defendant's Exhibit 17 by the witness that he did not receive any commission from anyone other than that reported on his return was neither true nor false because the witness got the commission from Marzec. The witness appeared before the Grand Jury that returned this indictment and testified that he received commissions.

311–316 (At this point in the testimony ensued a colloquy between counsel and the court concerning the Grand Jury Minutes. At the conclusion of this colloquy, the following proceeding occurred.)

315–316 By the Court: Any further cross examination?

By Mr. Struett: I have got a lot, your Honor. I would like to read this over and study it and I would like

to proceed with this witness tomorrow morning. This is very important to my case. I want to take this home.

By the Court: No, you can't take it away with you.

By Mr. Struett: Just his.

316 By the Court: No.

By Mr. Struett: All right.

By the Court: It is a Grand Jury record.

By Mr. Struett: All right.

By the Court: Can you go ahead for three or four minutes?

By Mr. Struett: Oh, I can ask him a few questions.

Mrs. Stanczewski, the mother-in-law and partner of the witness, made the record. The witness signed defendant's Exhibt 17 when he was called to Mr. Wolfe's office, where there was a stenographer present, and Mr. Wolfe asked the questions. The witness stated that evidently defendant's Exhibit 17 contained the only questions that were asked because they were all that were contained in the exhibit. The witness had been asked to come down at a certain time, but did not know what questions were going to be asked him. Mr. Brandt and Mr. Kusper were not there, and the witness did not know whether they signed similar affidavits at the same time. The affidavit was not prepared for the witness' signature before he arrived. He had to wait about a half hour after they asked the questions and then the stenographer brought in the typewritten sheet which he signed. Mr. Wolfe did not dictate the affidavit. The girl came in and sat across the desk from the witness and Mr. Wolfe asked him his name and all of these other things. The girl took it down in shorthand and then, about half hour later, she came in. The witness read the document over and signed it. Mr. Wolfe was with him all the time. The girl prepared it from the questions and answers.

There was no definite arrangement for getting a loan

through the Polish Union. Marzec brought in applications for loans but could not approve them without Brandt and Kusper. If all the loans were made which were applied for, there wouldn't have been enough money. The witness stated that all the appraisals were good appraisals because there was never a foreclosure in the P.R.C.U. on one of the witness' appraisals. The witness stated it was a question of putting in a good word.

323 Proceedings of February 7, 1957.)

STEPHEN KOBYLINSKI, being first duly sworn, testified on behalf of the government:

324-29 *Direct Examination.*

The witness was the auditor and comptroller of the P. R.C.U., occupying that position during the years 1949 and 1950. He was acquainted with the defendant, Joseph T. Marzec, who was employed by the P.R.C.U. as a bookkeeper in the Auditor's Department under the witness' jurisdiction. Mr. Marzec had charge of watching the mortgage loans for delinquencies, watching tax payments, preparing the schedules for the annual statement, and performing work of similar nature with respect to mortgage loans. His duties did not include any function relating to the collection of commissions on behalf of the P.R.C.U. from real estate brokers in connection with mortgage loans. The witness never received any commissions as auditor in connection with mortgage loan applications during those years or at any time. The only time the witness handled commissions was when they paid a finder's fee by check. Finder's fees were commissions paid by the P.R.C.U. and were paid in 1949 and 1950. They were paid by check on account the P.R.C.U. had with the First National Bank of

Chicago. No commissions were received or charged by the P.R.C.U. during the years 1949 and 1950 to the knowledge of the witness.

330-333 *Cross Examination.*

Mr. Marzec's duties were essentially clerical. He did not have an office at the P.R.C.U., but had a little enclosure with a regular size desk. There were seven persons in the one enclosure at the time.

331-333 (Thereupon the following colloquy between court and counsel took place.)

331 By Mr. Struett: If your Honor please, I just got from them—well, I have been through the Grand Jury testimony, and this book, and I got from them a summary of the entries, and basically I find there is an awful lot of it, and while I have been through it I think that our records show that we are trying to go along as fast as we can.

By Mr. Manion: You are referring to Mr. Sobieraj now?

By Mr. Struett: Yes. I got my accountant over here and I want to check this against our records, and I believe it is going to save all of us a lot of time if we could do it. It is a task that will take us a couple of hours at least. I am willing to go ahead if your Honor wishes,

332 but I call your Honor's attention to the fact that we will do it right away. We have our accountant over here now and it will take us a couple of hours to do it.

By the Court: Well, I want to try the lawsuit.

By Mr. Struett: I know, but this is important, your Honor, very, very important.

By the Court: What time will we have on trial?

By Mr. Struett: I don't know. I might be able to shorten my cross examination a great deal if I take this time.

By the Court: And you might not shorten it by two hours. I want to go through with this case.

By Mr. Manion: Mr. Struett has known we have this record for a long time.

By Mr. Struett: I knew the other day, but nobody ever offered it to me.

By the Court: I want to go ahead with the lawsuit.

By Mr. Struett: I want to check this book. I don't know what is in it without going through.

333 By the Court: Proceed with the cross examination. Put the witness on the stand.

(Testimony of Bruno L. Sobieraj, resumed.)

334-366 *Cross Examination.*

The witness had discussed his testimony with his attorney, Mr. Klein, and with the United States Attorney. He was not shown the affidavits that Mr. Marzec had furnished the government years ago. The witness believed that Mr. Marzec was paying the income taxes on the commissions.

The witness was sharing commissions with a man by the name of Kaczor under similar circumstances, but had shared no commissions or had any business dealings with Kusper.

Before the witness signed defendant's Exhibit 17, he received a form letter to appear at Mr. Wolfe's office for questioning. He did not consult with anybody before he went down to Mr. Wolfe's office. The witness denied having discussed the matter with Kusper and Brandt. Thereupon the following took place:

340 Q. And isn't it a fact that all three of you gentlemen received substantially the same letters and you all went down there and signed substantially the same sort of affidavit?

A. I don't know what they signed.

341 By Mr. Manion: I object, your Honor.

By Mr. Struett: Could I have the other affidavits?

By Mr. Manion: No, they are not material here.

By Mr. Struett: I would like to have the other affidavits.

By the Court: Sustained. The witness said they didn't go together. Sustained.

The witness stated that he had not read his Grand Jury testimony since the time he gave it or discussed his appearance before the grand jury with Mr. Kusper and Mr. Brandt. The only one he discussed it with was his attorney, with whom he talked before he appeared before the Grand jury. Thereupon the following occurred:

342 Q. Now, isn't it a fact that prior to the time that you went down and testified before the Grand Jury you had a conversation with Mr. Brandt and Mr. Kusper, and that you all three went down and gave testimony of substantial import as yours?

By Mr. Manion: I object to that, your Honor. It is beyond the knowledge of the witness as to what others would testify before the Grand Jury.

By the Court: I don't understand the question, anyhow. Sustained.

By Mr. Struett:

Q. I will put it to you another way, I will try to put it to you very simply:

Prior to the time you appeared before the Grand
343 Jury did you discuss your testimony of what you were going to testify, or your appearance before the Grand Jury, with Mr. Brandt or Mr. Kusper?

A. I never discussed it with Mr. Kusper, and I have only told Mr. Brandt I got—not before the Grand Jury; before the Grand Jury, nothing. I was thinking of the affidavit, but the Grand Jury, I didn't discuss it with anyone, absolutely no one except my attorney.

344 Q. You didn't have any understanding of any kind or character that you would all three go down there and give testimony of substantially the same import?

A. No, sir.

Before the Grand Jury on March 11, 1955, the witness admitted that he had testified that he had not talked with any of the other gentlemen outside concerning the testimony he was going to give before the Grand Jury. He then admitted that he had conversed with Mr. Brandt about it on that date and the day previous. Brandt had also talked about it on several occasions. The gentlemen referred to as being outside were Mr. Brandt and Mr. Kusper. The witness stated that he did not see Mr. Kusper outside of the Grand Jury room but did see Mr. Brandt; they did not discuss the matter at all. In a conversation with Mr. Brandt the day before, the latter had asked the witness what he was going to say before the Grand Jury. The witness did not ask them what the Grand Jury might be asking about since he knew what it was going to be. He knew this because he got a subpoena to bring all of his books on the Marzec case with him.

The witness took government's Exhibt 33, a little black book into the Grand Jury and made it available to the government at that time.

In 1946 and 1947 the Union had a substantial amount of money ($6,000,000) available which they were interested in loaning to the public in order to draw interest. At about that time, Marzec told the witness that Marzec was giving Brandt one per cent commission. Marzec also told the witness that he was to get one per cent. The witness believed that Marzec said that Kusper wanted to be in, but testified that Marzec did not say whether he gave the commission to Kusper or not. The witness did not know Kusper was in on it until after the investigation started. The witness never gave Kusper any money.

The witness had a partnership between himself and Mrs. Stanczewski, his mother-in-law. Originally it was his father-in-law's business, and the witness worked there. He was not a partner at that time. When the commissions were being paid, the witness would have Mr. Marzec make out certain checks to Mr. Stanczewski.

The witness denied holding out on his mother-in-law on the cash commissions. When Mr. Marzec used to bring the money in, the witness would say, "Don't talk too loud because we don't want everybody to know about it." He explained this by saying that the kitchen was right in back of his office and people would be in the kitchen.

The witness described his testimony before the Grand Jury as being generally truthful.

(Thereupon the Grand Jury testimony was marked as defendant's Exhibit 18 for identification and the witness was interrogated concerning specific questions and answers contained therein.)

The witness testified that he had never seen Brandt get any money and he did not know if Brandt got any money. Marzec might have said that he had given Brandt money, but the witness had never seen it. Later on, Marzec told the witness that Brandt was getting part of the money.

Thereupon the following took place:

359 Q. All right. Now, I will read you this question and here it is from the secretary of the Grand Jury: "He took his orders from Brandt."

Now, that refers to Marzec. Mr. Reeb is asking the questions.

"A. Yes."

The secretary of the Grand Jury then asked you:

"Q. Did you ever hear him mention that maybe Mr. Brandt had to get a share of that money?

"A. He never said that to me.

"Q. He never told you anyone was getting a share?

"A. He never said anything to me what was going on."

360 Were those questions asked you and did you make those answers?

A. If it is there, then I must have made them.

The witness never talked to Mr. Kusper and Mr. Brandt about these commissions. He knew that Miller, Banach, and Schroeder were paying commissions. He did not know Mrs. Clyde Cutler or Mr. Milton.

362 Thereafter the following proceedings occurred:

By Mr. Struett: Now, my cross-examination is substantially through and, unless they want to offer any records or substantiating material or summaries of them—I would like to have an opportunity to check them very thoroughly. I may have further cross-examination.

By Mr. Manion: Well, your Honor, we intended at this time to offer Government's Exhibit 33 for identification into evidence. If Mr. Struett is going to object to it, I will withdraw my offer.

Do you want us to leave this out?

Mr. Struett: You try your lawsuit. I am defending this man.

By Mr. Manion: I will offer the exhibit.

By Mr. Struett: I object to it. I haven't had an opportunity to check and cross-examine on it. It will take several hours to check. I haven't got my copy here to do it.

By Mr. Manion: We will stand on our offer of these exhibits, your Honor, as documents that have been identified by the witness, as part of his books and records that have been prepared in the regular course of his business.

By the Court: I am not sure that he did testify to that. Ask him those questions.

Thereafter the witness testified that the entries in government's Exhibit 33 were made by Mrs. Stanczewski on or about the same dates they bear in the regular course

of business of the W. Stanczewski Real Estate Company. All receipts, checks and disbursements were reported in the book. The witness and his mother-in-law did business as a partnership under the name of W. Stanczewski Co. The witness' father-in-law's name was Walter. He did business under that name and the witness and his mother-in-law continued the business. Government's Exhibit 33 was received over the objection of counsel for the defendant.

366-370 *Redirect Examination.*

The witness' attention was directed to an entry appearing in government's Exhibit 33 as to October 7, 1948, which showed that Kusper received Two hundred seventy five dollars. The witness had no independent recollection of making that payment to Mr. Kusper. The entries were made about the same time the disbursements were made. Subsequent to the time when the Internal Revenue Service first began to investigate Mr. Marzec for income tax purposes, he kept some future commissions to take care of some additional income tax that he had to pay. The witness had a conversation with Mr. Brandt about that subject. They agreed that Marzec would keep all of the commissions. That was following the time of the conversation with Marzec. Thereupon the following proceedings occurred:

368 By Mr. Struett: Before the witness goes, I want
369 to make a motion to strike the document. I haven't had ample time to cross-examine on it.

By the Court: It will be here subject to your examination, throughout the trial.

By Mr. Struett: The witness will be available if I want him?

By the Court: That is up to you. If you want him, you get him.

The witness delivered government's Exhibit 33 to Mr. Manion approximately three weeks ago. That was the day before the witness entered his plea of guilty in this case.

370 *Recross Examination.*

The book is in the witness' mother-in-law's handwriting and contains information given her by the witness insofar as it pertains to cash receipts.

Redirect Examination.

The witness' mother-in-law was charged with the duty of making entries in the book, and she would make them either from her own personal knowledge or from information received from the witness.

SAMUEL J. OSHEROFF, being first duly sworn, testified on behalf of the government:

371-397 *Direct Examination.*

The witness testified that he was a certified public accountant with the firm of Samuel Pop & Company, Los Angeles, California, by whom he had been employed for about one year. Prior to that time, beginning in October of 1951, he had been employed by Arthur J. Goldberg, a certified public accountant in Chicago. Prior to that time he had been an internal revenue agent for three years in the Internal Revenue Service. In connection with the examination of the return of Henry S. and Mary Banach for the year of 1949 which had been assigned to the witness for investigation, he discovered that there were certain amounts of money which had been paid out to Joseph T. Marzec. In questioning Mr. and Mrs. Banach, he was told that most of the amounts were required to be paid in cash and that a 1099 had been filed on the advice of their ac-

countant. There were sixty-seven checks in Banach's records made out to cash and bearing the notation on the back "Paid to Joseph T. Marzec" together with a description of the property and the amount of the mortgage; a certain percentage was the amount of the check. The witness had examined government's Exhibits 27-A through 27-Z and 27-AA through 27-II during his first examination of Mr. Banach's office and government's Exhibits 27-JJ through 27-OOO subsequently.

In September of 1950, the witness called Mr. Marzec to make an appointment to examine his books for the years 1948 and 1949 at his home. On September 26, 1950, the witness kept this appointment, examined the records of Mr. Marzec, saw that they agreed with the tax return filed by Mr. Marzec and asked Mr. Marzec a few questions. Mr. Marzec told the witness that these were real estate commissions and that he did not have a safety deposit box. Mr. Marzec's records for the year 1949 recorded the receipt of what he said was real estate commissions. Subsequently they turned out to be mortgage commissions. Mr. Marzec recorded deductions or commissions which he had paid to others in connection with 1949 and they agreed with deductions and commissions reported in the tax return.

After talking to Marzec, Banach told the witness that Harold Schroeder and Max Miller were doing business with Joe Marzec. The examination of Marzec's books showed commissions from Max Miller for the year 1949 amounting to probably around Twelve thousand dollars. Government's Exhibit 35 were work sheets prepared by the witness in the course of his examination of Mr. Marzec's records. Referring to this exhibit, the witness testified that Mr. Marzec reported gross commissions of Ten thousand one hundred twenty-two dollars from Max E. Miller; Three thousand three hundred thirty dollars from

William J. Hoppe and no other commissions for the year 1949. The return also showed commission expenses of Four thousand three hundred fifty dollars, including Six hundred seventy-five dollars to Bruno Sobieraj; the same amount to Stanley Kusper; One thousand five hundred dollars to William Stanczewski Company; and the same amount to B. Repsuk. Subsequently, the witness discovered that B. Repsuk was Kusper spelled backwards.

Subsequent to the witness' first meeting with Mr. Marzec, he contacted brokers whom he had been told were doing business with Marzec during the period between September of 1950 and April of 1951. He obtained a list of mortgages issued at the P. R. C. U. office; by looking at that list and by the finder's fees, he was able to find the entire list of brokers doing business with the P. R. C. U. He contacted a majority of the brokers on that list. He did not have any further conversation with Mr. Marzec from the time of his first meeting until April of 1951.

On April 12, 1951, he was present at a conversation with Mr. Marzec, his accountant, Arthur Wilson, Special Agent Donovan Johnson, Vito Konrad and a stenographer in the Special Agent's Office at 105 West Monroe. During that conference Marzec stated that he had never received money from Henry or Mary Banach. He stated he received a 1099 from them in February which had been returned to the Banach's with a letter by Mr. Wilson. He did admit to discrepancies as reported and subsequently reported regarding Max Miller. He stated that he had not received any other commissions than those reflected on the return.

In September of 1951, the witness examined the tax returns, books and records of Joseph Marzec for the calendar year 1950 in connection with Mr. Wolfe, a Special Agent in the Bureau of Internal Revenue. Government's Exhibit 35 contained his transcription of Marzec's records of commissions received and disbursements made during the

calendar year 1950. These records reflected commissions of Thirty-seven thousand dollars fifty cents. They were all received from Max Miller with the exception of Six hundred dollars from William Hoppe. It also showed unidentified "other commissions" One thousand dollars. These figures corresponded with the original tax return for that year. Government's Exhibit 1 and 2 were the returns which the witness examined. The 1950 return reflected commissions paid of Two thousand one hundred sixty dollars to Bruno Sobieraj; Four thousand four hundred ten dollars to William Stanczewski Company; and B. Respuk Four thousand seven hundred ten dollars, making a total of Eleven thousand two hundred eighty dollars. At the first meeting in 1951, Marzec definitely stated that he had no other income than that reflected except a possible adjustment with Max Miller's commissions.

Subsequent to that meeting there was another meeting in September, 1951 with Mr. Marzec, Mr. Wilson, Leonard Wolfe, and the witness in the Special Agent's Office at 105 West Monroe. Mr. Wolfe, who was conducting most of the examination, asked Mr. Marzec if he had received any commissions other than those reported and if he had mentioned at any time that he did split them with anybody. Mr. Marzec said, "I don't care to answer." Mr. Wolfe then turned to Mr. Wilson and said, "Your client is not talking." Mr. Wilson replied, "He won't tell even me anything."

397–420 *Cross Examination.*

The witness discovered amounts which had been paid to Marzec by Banach shortly before September 26, 1950 when he was examining Banach's 1949 return. He saw checks in excess of Thirty thousand dollars. At one conference, Banach stated that there were other brokers in the same situation. Thereafter he checked other brokers, including Max Miller, Mr. Hoppe and Mr. Schrader. He

obtained a list of commissions paid Marzec from Max Miller, saw checks from Mr. Hoppe agreeing with what Marzec had reported, but could not determine the amounts paid by Mr. Schrader. He then went to the P. R. C. U. and obtained the information from their records. He also had the information that Marzec was paying some commissions to Kusper, both as Kusper and as Repsak. He also had information that Marzec was paying Sobieraj. All of this information was available to him at the meeting of April 12, 1951.

The witness had examined defendant's Exhibit 15-A, a copy of the meeting which was held on April 12, 1951, which contained substantially the facts as to what took place at that meeting. The witness was fairly certain at the time of this meeting that Mr. Marzec was lying as to the Banachs. The Max Miller situation may not have been in the same circumstances as the Banachs. The distinction is that Max Miller paid him by checks made out to his order, which he endorsed and deposited to his account. The differences apparently arose through those checks which went into escrow. They were trying to get information from Marzec at the time as to whether he would admit doing business with Banach. Following which the following proceedings occurred:

405 Q. You didn't ask him about Schrader. You knew he was not admitting; why didn't you confront him with the Banach checks at that time? You had them.

A. Was it our duty to present that?

Q. I am asking you.

A. I was not conducting the situation. I was merely there as the examining agent, to investigate the records.

Q. I see. You knew at this conference he was sharing at least part of these commissions, and what they were you were not clear on?

A. That is correct.

406 Q. Why didn't you ask him with whom he was sharing these commissions?

A. At that point he would not admit receiving commissions, so how can you ask him how he shared them?

Q. You can ask him more specifically about the source of that money he paid to Respuk and Kusper and how he paid it and where it came from, and so forth?

A. He was asked, and he said those were commissions paid to them for helping him in deals.

The witness had no conference memorandum or diary entry as to the conversation which occurred in September of 1951. The witness was certain that the conference had occurred on September 28, 1951, because he made a memorandum of the time, but did not have a memorandum. He had only three conferences with Marzec, the ones concerning which he had testified substantially. He had a conference with Mr. Wilson outside of Mr. Marzec's presence. The first time Mr. Wilson called the witness was the day after the witness had been out to check Mr. Marzec's records, September 27, 1950. At that time Wilson told the witness that he had been retained by Marzec to represent him in the income tax matter which had come up although the witness had mentioned nothing about a possible tax deficiency to Mr. Marzec the day previously. After the first conversation and excluding telephone calls, Wilson spoke to the witness two different times and when the witness was examining for 1950 he and Mr. Wolfe were out at Mr. Wilson's office. At the time they were at the office, Mr. Wilson stated to the witness that his clients wouldn't tell him anything and that he would withdraw from the case if he could do so gracefully.

The witness knew a lawyer by the name of Tyrell Richardson and may have had one meeting at Mr. Richardson's office. The witness thought that at one time Mr. Richardson was called by Mr. Marzec to represent him.

Basically, the witness told Mr. Richardson nothing about the case. Mr. Richardson told the witness that he was going to represent Mr. Marzec along with Mr. Wilson. The witness told Mr. Richardson that he would not get anywhere dealing with the witness because it was out of the witness' hands.

The witness met Max Miller when he came to his office to examine the records in this matter and whenever he required additional information regarding checks. The witness never authorized Tyrrell Richardson to make a loan on the witness' behalf at the P. R. C. U. The witness did not make a loan there either. Miller had placed a loan on a piece of property before the witness purchased it. He saw an advertisement in the paper after he left government service, and it turned out to be Mr. Miller selling a piece of property which had a P. R. C. U. mortgage placed upon it about May 1, 1951. (The actual date was June 12, 1951.) The deal for this property was closed in January of 1952. The witness had left the Internal Revenue Service prior to that time (October, 1951) and gone to work for Mr. Goldberg. The witness did not believe that Mr. Goldberg was Mr. Miller's accountant at that time. The witness did not go right to work on Mr. Miller's records; he believed it was at least six to eight months after he left the government before he started to work on Miller's records.

In investigating this case, the witness and his associates had Mr. Sobieraj in, as the witness expressed it, "The situation being that nobody was telling anything and it was very difficult to find out anything at all except what we did find out and that is everybody saying that they had paid their commission moneys to Mr. Marzec." The witness believed that Mr. Sobieraj gave a statement to the special agents as did Mr. Kusper and Mr. Brandt. The witness was familiar with those statements. Thereupon the following proceedings took place:

419 By Mr. Struett: I think, to save time, Counsel, do you have the statements with you?

By Mr. Manion: You have Mr. Sobieraj's.

By Mr. Struett: Yes.

By Mr. Manion: And you want Mr. Brandt's and Mr. Kusper's?

420 By Mr. Struett: Yes, please. I want to have them identified.

By Mr. Manion: Your Honor, at this time, we can locate in our files the statement of Mrs. Brandt, although the statement of Mr. Kusper seems to have been misplaced. I have no objection to releasing the statements to Mr. Struett, as such, but I do object to releasing them to him on the grounds that this is not material issue in this lawsuit. Mr. Struett would appear to be trying Mr. Brandt and Mr. Kusper at the same time we are trying Mr. Marzec.

If he wants to lay a foundation to impeach Mr. Osheroff by this statement, I will be glad to give it to him. At this moment, this is part of the files of the Internal Revenue Department and he has not shown any grounds or reason for our showing that portion of the files to him.

By the Court: What are the grounds?

421 By Mr. Struett: It is a part of our case.

By the Court: For impeaching this witness?

By Mr. Struett: I don't want to impeach this witness. He says he took other statements.

By the Court: Do you object to this Counsel?

By Mr. Manion: Yes, your Honor.

By Mr. Struett: I want to—

By the Court: Sustained. Do you have anything further?

By Mr. Struett: I have to think it over.

By the Court: Think it over. You have two minutes.

By Mr. Struett: I can't think it over in two minutes. I am sorry.

By the Court: Your cross examination is concluded unless you proceed.

By Mr. Struett: I can't, your Honor.

By the Court: All right. Is there any redirect examination?

By Mr. Manion: Just a question.

422 *Redirect Examination.*

The witness did not negotiate for the purchase of the property from Mr. Marzec at any time before he left the Internal Revenue Service. The property was listed for sale in the Chicago Tribune in December, 1951, after he left the government. He purchased the property from Mr. Miller. Mr. Miller had placed a mortgage on it six or seven months before he purchased it. The witness did nothing in regard to negotiating the mortgage. Thereafter the following proceedings took place:

By the Court: Do you have anything further?

By Mr. Struett: I haven't had a chance to think the thing out. I haven't anything to say.

By the Court: Step down.

LEONARD B. WOLFE, being first duly sworn, testified on behalf of the government:

426-438 *Direct Examination.*

The witness stated that he was a special agent, employed by the Intelligence Division, Internal Revenue, United States Government. He had been employed by the Revenue Service approximately twenty years in that capacity. In July or August of 1951, he was assigned to the investigation of the tax returns of a Joseph T. Marzec. The duties of a special agent are to gather, obtain evidence and bind it up in regard to criminal prosecution, and if no criminal

prosecution, to bind it up to prove there are civil damages. Prior to filing, the witness interrogated Marzec about other income received by him. The witness conducted a joint investigation with Mr. Osheroff, an Internal Revenue Agent, in this case.

Following his assignment to the Marzec case, the witness arranged with Mr. Wilson, Marzec's accountant, to bring him in for a conference which took place September 20, 1951 in the office of the Intelligence Division at 105 West Monroe Street. Mr. Osheroff, Mr. Marzec, Arthur Wilson and the witness were present. Before calling in a stenographer to take the testimony, the witness started questioning Marzec. He asked Marzec if Marzec had failed to report any income in the line of commissions received from various real estate men. Marzec said, "I have nothing to say"; the witness then asked him if he got any commissions which he divided with the officers or his superiors in the Polish Roman Catholic Union, and Marzec said, "I do not wish to say", or "to talk". The witness turned to Mr. Wilson and said, "Your client doesn't wish to talk". Mr. Wilson said, "He doesn't talk to me. He doesn't wish to talk to me much." That ended the conference.

Following this conference, the witness called Mr. Wilson to ask if he could prevail upon Mr. Marzec to come into the office again. Two or three days later, Wilson told the witness he was not successful. The witness then signed and addressed a letter to Mr. Marzec requesting him to come into the office and adjust any matters which they had with regard to his income tax return. Government's Exhibit 36 is a copy of the letter which the witness addressed to Mr. Marzec. The copy was retained in the files of the Internal Revenue Service. Government's Exhibit 37 is the return receipt by registered mail that came back to the witness' office acknowledging receipt of the letter addressed to Mr. Marzec.

The next conference the witness had with Mr. Marzec was in the United States Attorney's Office in November, 1954, at which Mr. Struett, Mr. Rieger and Mr. Reeb were present together with the witness and Mr. Marzec. This conference occurred on November 8, 1954. At that conference Mr. Rieger and Mr. Struett mentioned that Marzec had a large book of kept records, that Marzec had an accountant, and that the accountant would get the figures that Marzec had with regard to these commission deals in order. The witness stated that, as he recalled, these books would be at the disposal of the United States Attorney, but they did not give them to the United States Attorney or the witness then. In the course of his examination of the 1949 and 1950 tax returns, he did not at any time have occasion to examine Marzec's books and records during the year 1951. He never participated with Osheroff in the examination of Marzec's records; Osheroff had done that before he had come to Wolfe. The books and records brought forward in 1954 at the United States Attorney's Office had never been available to him at any time.

438-468 *Cross-Examination.*

The witness stated that a special agent is the party who conducts investigation of a case to determine criminal prosecution. After the special agent has finished his investigation, he prepares his report and sends it back to the Civil Division for settlement or sends it with recommendation for prosecution as to one or more defendants. As the course of an investigation develops, one thing or another unfolds, usually. You start with a little bit and after you start you have first this one and then the other one, and sometimes when you get through you don't have any left, and sometimes you wind up only with the one you started with.

The only times the witness had anything to do with Mr. Marzec personally were the two conferences concerning which he testified. He had conversation outside of Mr. Marzec's presence with Mr. Wilson about the case. He had a conversation on September 28, 1951 in Mr. Wilson's office. Osheroff was with him at the time. Mr. Wilson said that he had difficulty getting information from Mr. Marzec. He also said that he did not know whether anyone in the Polish Roman Catholic Union shared in the collections made by Mr. Marzec. Mr. Wilson also said that he would just as soon get out of the case. The witness did not point out to Mr. Wilson that someone did share in the commission as shown by Marzec on his returns. As an experienced agent, the thought occurred to the witness that an employee in an inferior position must have had to share in any money he collected. The witness had no definite information on this and that is what they had to have. Mr. Marzec would not tell them anything.

The next conversation which the witness had with Wilson was October 28, 1951. Wilson had requested to come over to the witness' office. The witness had told him to bring Mr. Marzec in, but Wilson said he couldn't do it. Wilson said he wanted to come over and talk settlement of the civil case, he and Tyrrell Richardson. The witness said, "You will have to do the talking and we will do the listening. We cannot talk to you on civil settlement of this case." Wilson and Richardson came to the witness' office and the proposition was made that they would "settle for Joe Marzec, that Joe Marzec would settle the full civil damage, the full civil income tax liability as set out by Mr. Osheroff, and within five or six months." At that time the witness had substantially all of the information from the brokers who testified. At that time, the witness had just about concluded to clear the case for prosecution.

The witness had a slight conversation with Richardson

about this case in Max Miller's office while the witness was over there trying to straighten out some of the evidence. The witness believed Tyrrell Richardson said that they were trying to go up high to settle the case. The witness did not think they would get anywhere trying to settle the case.

The witness did not recall that Attorneys Rieger and Struett, on behalf of Marzec, offered two lengthy statements of Marzec (defendant's Exhibits 19 and 20) to the government at the conference in the United States Attorney's Office on November 8, 1954. He did not recall one of the agents saying, "We don't want those statements; we have got our case against Marzec, and we aren't interested in anyone else." He did not recall that Mr. Reeb took these statements. He had a faint recollection of those papers, but does not recall receiving them personally or seeing them at the conference table. He remembered Messrs. Struett and Rieger saying that their accountant would be available, that he had gone over the figures and similar statements.

The witness did not recall being present at a conference at which Mr. Lunsford, the head of Special Intelligence, was present. He did recall being present at a conference with Mr. Kabaker, Mr. Rieger and Mr. Tobin. At this point, the following proceedings took place:

455 By Mr. Manion: I object to that line of questioning at this time as going beyond the scope of the direct examination of the case. It seems to me Mr. Struett is now taking us into an entirely different field. If he wants to advance the defense along that line he is free to call these men in as his own witnesses in his own behalf in his own case in chief. I don't think this is the proper time to go into that line of interrogation.

By the Court: I don't remember anything about that in the direct.

By Mr. Struett: He testified about a conference he had in the United States Attorney's office on November 8th or December 8th.

By the Court: What year?

By Mr. Manion: 1954.

By Mr. Struett: 1954.

By the Court: No.

By Mr. Struett: I beg to differ with you. What date did he say?

456 By Mr. Manion: He testified about 1954, Mr. Struett.

By Mr. Struett: That is December 8, 1954?

By Mr. Manion: You are asking him now about 1955.

By Mr. Struett: All right. Now I asked him whether or not at that conference—

By the Court: Well, now which one? Let us know which one it is.

By Mr. Struett:

Q. Is it November 8th or December 8th?

A. November.

Q. November 8th.

By the Court: What year?

By Mr. Struett: 1954.

By the Court: Well, you were asking about 1955.

By Mr. Struett: That is right, which is about three months later.

By Mr. Manion: That is what I am objecting to.

457 By the Court: That is the reason there was an objection and that is the reason it is sustained.

By Mr. Struett: If your Honor please, I would like to make an offer of proof on this thing.

By the Court: Step into the jury room, ladies and gentlemen.

458 (Thereupon the following further proceedings were had in open court, outside the presence and hearing of the jury:)

By Mr. Struett: I offer to prove by this witness—

By the Court: Now, just wait a minute. Why do you suppose I sent that jury out?

By Mr. Struett: I beg your pardon.

By the Court: Proceed.

By Mr. Struett: I offer to prove by this witness that subsequent to November 8, 1954 there was a meeting in the office of the United States Attorney, Robert Tieken, which was attended by Arnold Kabaker, Joseph Tobin, Sam Crane. These are special agents. Arnold Kabaker and Sam Crane are special agents. Special agent—Freiberg, isn't it?

By the Witness: That is right.

By Mr. Struett: Mr. Tieken and Mr. Wolfe. And, in addition thereto, there was present Mr. Rieger on be-
459 half of the defendant Marzec and the substance of this conversation was that Mr. Rieger advised Mr. Tieken in their presence that he had delivered the two statements, Defendant's Exhibits 19 and 20 to the agents, or the United States Attorney Reeb on the date mentioned, November 8, 1954; that they fully set forth the true picture in this case; that there was additional accounting evidence which would be available to them and that the agents were reluctant to proceed with the investigation other than as against the defendant Marzec, since Marzec alone had been recommended for prosecution.

That it was the general consensus of that meeting and particularly so from the standpoint of the Revenue people, that they should proceed only against Mr. Marzec; that there were affidavits in the files by the other defendants, Kusper, Brandt and Sobieraj to the effect that they had not received any commissions and if they were called to

testify or anything, that they would take the Fifth
460 Amendment, and that during the course of that conversation, or as a part thereof, Mr. Tieken—oh, yes, and that the agents advised Mr. Tieken that they would not conduct any further investigation in this case without the authority of the Commissioner of Internal Revenue.

Now, that is my offer of proof from this witness.

By the Court: Any objection?

By Mr. Manion: Your Honor, we would object to the offer of proof at this time as being beyond the scope of the direct examination of this witness and not proper in the cross-examination, or in the Government's case as such. Further, we object—

By the Court: What was the latest conversation that this witness testified about?

By Mr. Manion: December or November of 1954, your Honor.

By the Court: This was subsequent, something that transpired in 1955?

461 By Mr. Manion: Subsequent, something that transpired in 1955.

By the Court: Objection sustained.

462 By Mr. Struett:

Q. I show you Defendant's Exhibit 17 for identification, and ask you whether or not you ever saw that before?

A. Yes, sir, I have.

Q. Where?

A. In the office of the Intelligenc Unit, in my file attached to the report which I wrote.

Q. And what is it?

A. It is an affidavit by Bruno Sobieraj. Wait a minute.

Q. What is the date?

A. It is dated October 16, 1951.

Q. I want you to tell us the circumstances under which you procured that affidavit?

By Mr. Manion: I will object to that on the same grounds as the prior question, your Honor.

By the Court: Sustained.

By Mr. Struett: If your Honor please, this man has made an investigation and—

By the Court: Sustained. Proceed to another question if you want to put one.

By Mr. Struett:

Q. Now, did you, on or about the date that you obtained this affidavit, obtain other affidavits from Mr. Brandt and Mr. Kusper?

By Mr. Manion: Objection.

By the Court: Sustained.

By Mr. Struett: I want to make an offer of proof on that.

By the Court: Step into the jury room, ladies and gentlemen.

(Thereupon the following further proceedings were had and taken, outside the presence and hearing of the jury.)

By the Court: Proceed.

By Mr. Struett: I offer to prove by this witness that as part of his investigation in this case, he obtained this affidavit from Bruno L. Sobieraj, which has been marked Defendant's Exhibit 17, and that on or about the same time he also obtained similar affidavits from Frank A. Brandt and Stanley Kusper, of substantially the same purport and effect.

464 By Mr. Manion: We object to the offer of proof on the grounds that it is not proper cross-examination of the witness.

By the Court: Sustained.

Bring in the jury. Have you any other like matters, before we bring the jury in.

By Mr. Struett: I don't know, your Honor. I am not well. I am doing the best I can here and you are just

pushing me and I am so nervous I don't know where I am going.

By the Court: Calm down now. We are trying a lawsuit.

By Mr. Struett: I know we are. I am representing a client and I am not well. I asked for a few minutes this morning and you wouldn't give them to me, and I am doing the best I can.

By the Court: I asked you if you had any like matters.

465 By Mr. Struett: I don't know; your Honor, I am trying to do the best I can.

By the Court: All right, bring in the jury.

(Thereupon the following further proceedings were had and taken, in the presence and hearing of the jury:)

By Mr. Struett:

Q. Now, I show you a letter—

By Mr. Struett: Mark this Defendant's Exhibit No. 21.

(Thereupon said document was marked Defendant's Exhibit 21 for identification.)

By Mr. Struett:

Q. (Continuing.) —dated September 16, 1954, and ask you what it is, and what it is about, and if it refreshes your recollection.

A. Well, this is a receipt attorney Rieger gave me for a number of cancelled checks which I was requested to deliver to him at his office.

Q. Now, those were checks which you had obtained
466 from Mr. Marzec during the course of this investigation, isn't that correct?

A. No. I did not obtain it.

Q. Well, Agent Osheroff did?

A. Agent Osheroff did.

Q. That is right. Now, who requested you to return those checks to Mr. Rieger?

By Mr. Manion: I am objecting again, your Honor.

By the Court: Sustained.

By Mr. Struett:

Q. Did you have any conversation with me about those checks before you returned them?

By Mr. Manion: I object to that.

By the Court: Sustained.

By Mr. Struett: Very well.

By Mr. Struett:

Q. Did you have any conversation with Mr. Rieger about the return of those checks before you returned them?

By Mr. Manion: I object.

By the Court: Sustained.

By Mr. Struett: I have another offer of proof to make here, your Honor. I am sorry.

467 By the Court: I asked you about that.

By Mr. Struett: I appreciate it.

By the Court: I asked you just four minutes ago if you had any further matters of that kind.

By Mr. Struett: I will make it later on, if it is satisfactory to the Court and the witness will be here. He is around here, anyhow. So, we won't take out the jury. I just want to reserve the right to make it. It will be very short. Will it be all right?

By the Court: You go ahead with your examination. Any matters that you want to present, now, that have to be presented outside of the presence of the jury, I want you to collect them. I don't want to spend the whole afternoon having these people walk back and forth.

By Mr. Struett: That is all.

By the Court: Any redirect examination?

468 By Mr. Manion: I have no further questions of this witness.

By the Court: Step down.

NICHOLAS M. RIEWER, being first duly sworn, testified on behalf of the government:

469-479 *Direct Examination.*

The witness testified that he was a technical advisor on the appellate staff of the Internal Revenue Service. In that capacity, he attended a conference at the Penal Division in the City of Chicago in the case of Joseph T. Marzec on September 12, 1952. In addition to the witness, Attorney Tyrrell Richardson, Arthur Wilson, a C. P. A., Mr. Marzec, an attorney for the government by the name of DeWan, and a court reporter, Ruth Halfeld, were present. The conference started by warning Mr. Marzec of his constitutional rights and then there were preliminary questions as his name, occupation, etc. A good deal of the conference was then conducted by Mr. Richardson asking Mr. Wilson what he had done for Mr. Marzec in trying to determine his tax liability in working with the agents. Mr. Marzec had very little to say outside of the preliminary questions. The general topic of discussion was how much he had received in commissions during the years 1949 and 1950. There was a big discrepancy as to what Mr. Marzec admitted he got. There was a discussion of checks from Mr. Banach and a discussion about a man named Max Miller. Mr. Wilson did most of the talking. Mr. Wilson said they only had an indication that there were about two checks and one deposit. That's all they seemed to know about. The witness stated that they denied receiving any other payments from Mr. Banach at that time. The witness believed that Mr. Marzec was asked whether he got commissions from Thomas Scott of J. Cutler Sheldon. The witness did not recall what Mr. Marzec said about those particular men. Mr. Marzec himself was never asked to answer questions at the conference

concerning commissions other than the ones reported in his tax return. Most of the talking was done between Mr. Richardson and Mr. Wilson. Mr. Wilson and Mr. Richardson tried to indicate that the commissions reflected in Marzec's tax return for the year 1949 were about all he received. They also mentioned something about an amended return having been filed for 1950. There was no discussion as to what specific commissions were included in the amended return. Government's Exhibit 34 is the transcript of the conference concerning which the witness testified. After refreshing his recollection from this transcript, the witness stated that Mr. Richardson and Mr. Wilson had concluded that all commissions were included in the amended return for 1950. The commissions paid to Mr. Marzec were reported to have been received from Max Miller. The representatives of the taxpayer admitted some commissions from Mr. Banach but didn't state specifically what amount. Marzec was asked if he got checks from Thomas B. Scott, but the witness did not remember whether Marzec admitted that he got them. After refreshing his recollection, the witness testified that Marzec denied that Mr. Scott paid him anything.

479-482 *Cross-Examination.*

The witness testified that he believed Wilson mentioned that he had prepared a net worth statement on everything else. The witness would expect an accountant to have his work papers supporting a net worth statement on paper so the witness could see what the accountant was driving at when the accountant presented the net worth statement. The conference at what was then the Regional Counsel's Office, was the final step before a case is sent back for civil settlement or forwarded to justice with a recommendation for prosecution. This case was forwarded as to Marzec only so far as the witness knew. The witness, having had

his recollection refreshed by reference to the transcript of the conference, testified that he remembered Richardson saying, "With Marzec's signatures on the checks—if you have them, my man—he's hooked and on his way to the penitentiary."

After the witness Riewer was excused, the following proceedings transpired:

483 By Mr. Struett: Your Honor, I would like to have an adjournment. Let's not fool around in this matter. I am just not well. I have gone along all the time since Monday. I am trying this case when I am not feeling well.

By the Court: Why can't you go on? Why can't your assistant take over?

By Mr. Struett: He doesn't know this case. He is just sitting here with me. I wouldn't say this to you if I didn't mean it.

By the Court: Step into the jury room, ladies and gentlemen:

(Thereupon the following further proceedings were had in open court, outside the hearing and presence of the jury:)

By the Court: Why can't we go ahead with this case?

By Mr. Struett: Because I don't feel well. I have gone along here since Monday. I take sleeping tablets at night to try to sleep. My legs are giving out, they are dead under me. I can't tell you any more. If your Honor will put this case over I will be here Monday morning and I will have had a little rest and I can finish it so quickly your Honor won't want to lose any time. I can finish it very quickly then.

By the Court: Is this your last witness, Mr. Manion?

485 By Mr. Manion: We will have Mr. Worcester and then Mr. Ruggaber will testify as to the tax computation. Mr. Ruggaber will testify to that.

By the Court: Who is Mr. Ruggaber?

By Mr. Manion: He is the gentleman who is our tax advisor and who has been present throughout the trial with Mr. Worcester.

By the Court: What is his name?

By Mr. Manion: Mr. Ruggaber.

By the Court: That is not the gentleman who just left the stand?

By Mr. Manion: No.

By Mr. Struett: If he is just going to give computations then let him give them to me and I will get through with it and then put him on and I will be ready Monday.

By the Court: If you get through with the evidence I will give you a little time to collect your thoughts. You can have over the week-end to try to collect your thoughts, but I would like to have the evidence in.

486 By Mr. Struett: Then let's try to go ahead with it.

By the Court: I will give you a chance to try to collect your thoughts after all the evidence is in, but let's get the evidence in first.

By Mr. Struett: All right.

KENNETH N. WORCESTER, being first duly sworn, testified on behalf of the government:

486-498 *Direct Examination.*

The witness testified that he was a special agent, Internal Revenue Service, United States Treasury. He had been present in the court room throughout the course of this trial, having been assigned by his superiors to assist the United States attorneys in the preparation of this case. He heard the evidence and saw the exhibits introduced on behalf of the government during the course of this trial.

He prepared summaries or work sheets on the basis of the evidence offered on behalf of the United States. Government's Exhibit 38 for identification was prepared by the witness based on the evidence he heard in the court room and the documents offered in evidence. Government's Exhibit 38-A is a summary of the alleged income received by the defendant Marzec during the year 1949 and government's Exhibit 38-B is a summary of the alleged income received by the defendant for the year 1950. The summaries were prepared from government's Exhibit 38 and were typed under the witness' supervision and direction.

Government's Exhibit 38-A was as follows:

Max Miller	$21,450.00	
Henry Banach	30,545.00	
Thomas G. Scott	5,355.00	
Cyril I. Milton	4,200.00	
William J. Hoppe	3,350.00	
Total commissions		$64,900.00
Paid out:		
Stanley T. Kusper	$ 2,175.00	
Bruno Sobieraj	7,848.33	
Frank A. Brandt	17,900.00	
		27,923.33
Remaining Commissions		$36,976.67

Government's Exhibit 38-B was as follows:

	1950	
Max Miller	$35,650.50	
Henry Banach	39,820.00	
Thomas G. Scott	1,725.00	
Cyril I. Milton	3,700.00	
William J. Hoppe	600.00	
J. Cutler Sheldon	7,500.00	
Total commissions		$88,995.50
Paid out:		
Stanley T. Kusper	$ 4,710.00	
Bruno Sobieraj	10,659.00	
Frank A. Brandt	28,325.00	
		43,604.00
Remaining Commissions		$45,391.50

Government's Exhibit 33-A shows receipts by Bruno Sobieraj from Joseph Marzec for the year 1949 from the book of Bruno Sobieraj. Government's Exhibit 33-B shows receipts by Bruno Sobieraj from Marzec for the year 1950 per the book of Bruno Sobieraj. These two exhibits were prepared by the witness and typed under his supervision. They reflect, to the best of the witness' knowledge all the income received by Sobieraj from Joseph T. Marzec in the calendar years of 1949 and 1950. In the preparation of government's Exhibits 38-A and 38-B, the witness didn't attribute any additional income to Marzec on the basis of Bruno Sobieraj's cash book. He used the book only to establish deductions and expenses. The witness took Sobieraj's book and made a list of the moneys and checks that he received from Marzec. These appear in government's Exhibits 38-A and B. The witness also determined deductions for commissions paid by the defendant Marzec to

Frank A. Brandt for the years 1949 and 1950 on the basis of an interview with Mr. Brandt. Mr. Brandt admitted receiving payments from Marzec but had no record of the payments he received. Brandt attempted to arrive at a figure, based on expenditures. Brandt stated that the total commissions for the period 1948 through 1952 were between Forty thousand dollars and Forty-five thousand dollars. Brandt was unable to tell what he had received in any particular year. Marzec stated that he had paid Brandt Seventeen Thousand Nine Hundred dollars in 1949 and Twenty-eight thousand two hundred thirty-five dollars in 1950. Based on Brandt's lack of records the witness credited Marzec for the amount he stated he gave to Brandt.

The witness likewise attempted to determine whether Marzec was entitled to deductions for commissions paid to Stanley Kusper in excess of the deductions stated in the tax returns for the years 1949 and 1950. He examined Kusper's books and records for those years which reflected the checks issued by Marzec to Kusper and Respuk. He did not find any additonal income from Mr. Marzec which was unreported.

Thereupon the following proceedings transpired:

497 By Mr. Manion: At this time, your Honor, the
498 Government will offer in evidence Exhibits 38-A and 38-B for identification, being summaries prepared by Mr. Worcester from his work sheets, Government's Group Exhibit 28.

Mr. Struett: I object.

By Mr. Manion: I will also offer in evidence Government's Exhibits 33-A and 33-B for identification, which are summaries prepared on the basis of Government's Exhibit 33 for identification.

By Mr. Struett: Well, I assume I can cross examine first.

Cross Examination by Mr. Struett.

Q. Now, let's understand this first. On these exhibits in 1949 and 1950 you show what commissions were paid to Mr. Marzec. In fact, they were all paid to Mr. Marzec, weren't they?

A. They were alleged to have been paid to Mr. Marzec.

Q. Your accounts are the result of your listening to the testimony as you sat here?

499 A. On the basis of what evidence I heard.

Q. You said that you went in and examined books, and that is an investigation, isn't it.

A. For payouts, by Mr. Marzec.

Q. For the year 1949, Mr. Marzec had $64,900.00 of income or commissions he received. Let's take it first for 1949.

There was $64,900.00 of commissions that he received?

A. If that is the figure on there. This is the total commissions of $64,900.00 shown on this schedule. That is the total of the evidence I heard in this court room that was allegedly paid to Mr. Marzec.

Q. There isn't much doubt it was paid to him, is there?

A. According to the evidence.

Q. That's right. Now, the second line is $2,175.00 to Stanley Kusper.

A. Yes, sir.

Q. There isn't any doubt he got $2,175, is there?

A. No, sir.

500 Q. There isn't any doubt in your mind he got a lot more, is there?

By Mr. Manion: I object to that, your Honor.

By the Court: He may answer.

By the Witness:

A. Based on my investigation, I could find no more money, whether he did or did not, I cannot say. He said

he did not, his records do not show the receipt of any more money.

By Mr. Struett: Q. His records would not show receipt of any more money, would they?

By Mr. Manion: I object.

By the Court: Sustained.

By Mr. Struett:

Q. I mean, if it was cash it wouldn't show on there, would it? Now, you have an affidavit in your file that Mr. Kusper got cash, haven't you, in the course of your investigation and that he was paid in cash?

By Mr. Manion: I object to that.

By the Court: Sustained. He testified to what he
501 heard here in open court and as to the records he looked at.

By Mr. Struett: I have got a right to show what their file shows here, whether they have got evidence.

By the Court: Objection sustained. Stay within the direct.

502 By Mr. Struett: I have got a right to show what their file shows here, whether they have got evidence.

By the Court: Objection sustained. Stay within the direct.

By Mr. Struett: I will have to make another offer of proof then.

By the Court: You just get on with the case until we come to the end of the day, and then we can make all the offers of proof.

By Mr. Struett: I am not in any shape to go ahead that way. I am sorry, your Honor. I just object to the whole thing. I will go ahead and do it to the best of my ability then.

By the Court: Is there any cross examination?

By Mr. Struett: I have got some, but—well, they have

got affidavits, and I don't want to say it in front of the jury, and that is the use of it?

By the Court: Is there any further cross examination?

503 By Mr. Struett: I can't, until I have made my offer of proof, and until I have made my position clear in this matter.

By the Court: I understand your position, and now I want you to go ahead with your cross examination. I will let you make your offer of proof at the end of the day. That is not very far away; that is just 37 minutes.

By Mr. Struett:

Q. Well, do you have any evidence in your files, in your Government files, that Mr. Kusper got paid any cash? Yes or not.

A. No, not that I can remember.

Q. You have an affidavit from Dorothy E. Sipora, who is his secretary, in your files?

A. Yes, I do have an affidavit from Miss Sipora.

Q. Then look at it.

(Addressing Mr. Manion): Let him see it.

By Mr. Manion: Do you want to see the affidavit, Mr. Worcester?

By the Witness: I would like to see it.

By Mr. Manion: All right.

504 (Document handed to the witness.)

By the Witness:

A. Oh, I recall. I don't see anything in here saying that he was paid cash.

By Mr. Struett:

Q. Now, you had a statement from this same lady in your files, did you not, dated December 29, 1954?

By Mr. Struett: Mark this the next defendant's number.

(Thereupon said document was marked Defendant's Exhibit 22 for identification.)

By Mr. Struett:

Q. You have read this, have you not?

A. Well, could I see that, please?

Q. That is her statement in full or in more detail.

A. I saw this statement in the office of the U. S. Attorney.

Q. Have you got a statement in your file from August Mroz—is that his name?

By Mr. Manion: M-r-o-z.

By Mr. Struett:

Q. Do you have a statement from him in your files?

505 A. Yes, he was interviewed.

Q. Did he say that Kusper got any cash commissions?

A. Not cash.

Q. What did he say?

A. Check. He said he got money.

Q. Did you ask him whether he got any money in cash?

A. I asked him whether he knew that Kusper received any cash, and he said he did not see any cash.

By Mr. Struett: Have you got the statement there?

By Mr. Manion: He has no written statement. Mr. Worcester and I talked to Mr. Mroz together.

By Mr. Struett:

Q. The Grand Jury found he got some of this cash, didn't they, when you presented this?

By Mr. Manion: I object.

By the Court: Sustained.

By Mr. Struett:

Q. You have got Mr. Marzec's testimony that he

506 paid Kusper part of cash, but you are still disallowing

it because Kusper denies it. Is that the idea of this thing?

A. I considered Mr. Mroz' statement.

Q. As I gather this story, you found that just about correct on Brandt, didn't you?

A. I wouldn't say that.

507 Q. Well, you got about the same figures and yet you are disallowing half of it because Sobieraj has made available to you the right book on his own statement? You are accepting Sobieraj's statement against Marzec's, isn't that right?

A. That is the only money I can find going to Sobieraj from Mr. Marzec.

Q. In other words, that is the only amount of money that Sobieraj would admit to you that he received, is that right?

A. That is the only amount that my investigation disclosed that Mr. Sobieraj received.

Q. And you would not give Mr. Marzec credit for this thing unless these other gentlemen admitted it, is that right?

A. I considered the amount he said he paid to these gentlemen.

Q. Of course you recognize, don't you, that all these gentlemen denied originally that they received anything?

By the Court: You are arguing now.

By Mr. Manion: I object.

By the Court: Yes.

508 By Mr. Struett:

Q. Isn't it a fact that all these gentlemen denied ever having received any of this money?

By Mr. Manion: I object to that, your Honor.

By the Court: Sustained.

By Mr. Struett:

Q. Now, you say you gave credit or consideration to Mr. Marzec. Mr. Marzec had some records there for you, didn't he?

A. He submitted a list that it was stated was prepared after all the transactions had been made, stating what he claims that he paid to these other people.

Q. That is not right, is it, sir?

A. Sir?

By Mr. Manion: I think that is it.

By Mr. Struett: I am just asking him.

By Mr. Struett:

Q. I would like to see that, where he says that is true. I don't know that is true. I am sorry.

509 You say it is true and I say it is not. Let's get the transcript.

(Addressing Mr. Manion.)

You show me where he said that.

By the Witness: Who?

By Mr. Struett:

Q. Show me where the list of statements made up after the transaction appears. Is that what you say?

A. He presented columnar sheets listing the description of the property, the amounts of moneys received by him, and the amount of money paid out to all these different people, and it was represented—that schedule was given to me and it was either made up after the transaction had occurred, or they thought that the schedule had been made up after the transactions had occurred.

Q. I think you and I are talking about two different things. This document (handing document to the witness) was submitted to you later, which was a summary. This is what you are talking about?

By Mr. Manion: Will you mark that for identification?

510 By Mr. Struett: Is this the same thing? Mark it the next number, and mark this one, too.

(Thereupon said documents were marked Defendant's Exhibits 23 and 24 for identification.)

By Mr. Struett:

Q. Is this the only list you took into consideration?

A. 1949-50. With respect to amounts, it is.

Q. You disregarded any other proof in the case because this was made up afterwards, is that right?

A. This is the only evidence I had from Mr. Marzec where he said or where he alleged that he paid out monies to these other two gentlemen.

Q. This is the only evidence you had?

A. Of amounts.

Q. These are the only figures, summary figures, you had of amounts, is it?

By Mr. Manion: I object to that as argumentative.

By the Court: Sustained.

By Mr. Manion: Going back and forth over the same thing.

511 By Mr. Struett:

Q. You had other evidence Mr. Marzec had paid out to these men, but you had the amounts in your possession, didn't you?

A. Those are the only things I can think of other than what—

Q. You had some original work sheets where he kept his original records showing how he distributed it. You had in addition to that a long statement where he discussed this detailed arrangement, didn't you?

By Mr. Manion: I object.

By Mr. Struett: Well—

By Mr. Struett:

Q. You had available in addition to that what the situation was and the checks that were shown, and what was done after 1951, and how they carried this thing into effect, didn't you?

By Mr. Manion: I object.

By the Court: Sustained. If you will get back to the direct, it might be desirable. Confine yourself to that.

By Mr. Struett: I would like a recess, your Honor.

512 By the Court: No, we will go on until four-thirty.

By Mr. Struett: I don't know what I want to ask this man now. I want to check these things over. I don't know what to ask.

By the Court: Conclude your cross-examination.

By Mr. Struett: I don't know anything right now to ask. I would like to have a chance to go over these things and a little opportunity to do so.

By the Court: How much time would you want?

By Mr. Struett: I would like to have until tomorrow morning and then have them put on their evidence. I have just got to have some rest. I am sorry.

By the Court: Would you be ready at ten o'clock tomorrow?

By Mr. Struett: I would like to have them proceed as to their other witness and then Monday I would like to proceed with my defense.

513 By the Court: No.

By Mr. Struett: I am not going to be rushed continuously. I just can't take it any more.

By the Court: Step into the jury room, ladies and gentlemen.

By Mr. Struett: I just can't take it.

(The following proceedings were had and taken out of the presence and hearing of the jury.)

By the Court: How much more cross-examination have you got of this witness?

By Mr. Struett: Judge, I don't think I have got any more. I don't know. I will let them finish tomorrow. Just give me a little more time.

By the Court: Are you through with this witness?

By Mr. Struett: I don't know.

By the Court: Tell me. Try it like a law suit.

By Mr. Struett: I am trying to try it like a law suit.

514 By the Court: Oh, my goodness.

By Mr. Struett: Oh, my God, I can't.

By the Court: Don't talk that way. I said "goodness".

By Mr. Struett: All right, I beg your pardon. Let this fellow go. I will stay here and let them put on Ruggaber tonight and then I will be ready Monday morning.

515 By the Court: No, we are going to finish this lawsuit, this evidence.

By Mr. Struett: But I can't take it any more, Judge. I am not able to.

By the Court: Yes, you can go on.

By Mr. Struett: I have to have an opportunity to talk to my client. I am not able to.

By the Court: Oh, yes, you are able.

By Mr. Struett: When I represent a client—I mean when I am not in a condition—

By the Court: Have you any more cross-examination?

By Mr. Struett: I don't know.

By the Court: I am asking you.

By Mr. Struett: What do you want me to do? I will do anything within reason.

By the Court: I want you to finish your cross-examination of this witness. Do you want me to dismiss him? I am asking you, do you want to ask him any more questions?

By Mr. Struett: I don't know. I have got a client
516 here to represent. I have been pushed and pushed here as long as I can take it, ever since Monday. I can't take it any more.

By the Court: Oh, you haven't worked one-half as hard as I have seen you work.

By Mr. Struett: Well, you saw me work when I was a lot younger.

By the Court: Do you want to ask this man any more questions?

By Mr. Struett: I don't know. I am honest with you.

By the Court: Have you any redirect?

By Mr. Manion: No, your Honor.

By the Court: Bring in the jury.

(Thereupon the following further proceedings were had in open court, in the presence and hearing of the jury.)

By Mr. Struett: If your Honor please, I make a motion to strike all the evidence.

By the Court: To what?

By Mr. Struett: To strike it.

By the Court: To strike what?

By Mr. Struett: His evidence.

517 By the Court: Motion denied. Have you any further cross-examination of this witness?

By Mr. Struett: I don't know, your Honor.

By the Court: If you have any ask your questions now.

By Mr. Struett: I am not able to do it, your Honor. I am sorry.

By the Court: Is there any redirect?

By Mr. Manion: No, your Honor.

By the Court: You may step down.

(Witness excused.)

By Mr. Manion: We have an offer pending of Government's Exhibits 33-A and 33-B and 38-A and B for identification, being summaries prepared by this witness.

By the Court: Is there any objection?

By Mr. Struett: I object to them all.

By the Court: What is your objection?

By Mr. Struett: I don't think they have been properly identified. I haven't had a chance to see some of them.

518 I don't know what is in part of them. I would like to check my records. I think my examination here has been limited. I need support, and I need a reasonable amount of time.

By the Court: I can't hear you.

By Mr. Struett: I object to it.

By the Court: Why?

By Mr. Struett: I have given it to you as best I can. I am sorry.

By the Court: The objection is overruled. They may be received. Proceed.

WILLIAM M. RUGGABER, being first duly sworn, testified on behalf of the government:

518-529 *Direct Examination.*

The witness stated that he is a technical advisor in the office of the Regional Counsel for Chicago, Internal Revenue Division, District Region. He assists the legal staff on questions pertaining to income tax and accounting on cases coming into the office for possible criminal prosecution. He also attends conferences with representatives of taxpayers. The witness testified he was able to determine the income tax due from a given individual for a given calendar year provided he was given the deductions, credits, exemptions and gross and net income figures for such an individual. The witness testified that he prepared Government's Exhibits 39 and 40 and that they were typed under his supervision. He had examined the tax returns for the defendant, Joseph T. Marzec, for the years 1949 and 1950 and the

amended income tax return for 1950 and had been present in the court room throughout the trial, having opportunity to examine the various documents offered in evidence by the government. The witness had examined Mr. Worcester's work sheets, government's group Exhibit 38. Government's Exhibit 39 is an itemization of the items appearing in government's Exhibit 1 for the calendar year 1949 in the first column, additions or changes in the second column, and corrected income in the third column. Government's Exhibit 40 is a similar document for the year 1950, with the adjustments made to that income as corrected. The witness testified that these exhibits were based on the evidence received and the testimony presented in his court only. (Over objection by plaintiff's counsel that the extive, GOVERNMENT'S EXHIBITS 39 and 40 were admitted in evidence.)

Over objection of defendant's counsel on the same grounds, the witness was permitted to testify that Marzec had a net income of Thirty-eight thousand six hundred sixty-four dollars and ten cents, a tax liability of Ten thousand seven hundred twenty four dollars and twenty-two cents for the year 1949 and that he still owed the government Nine thousand three hundred twenty-six dollars and fifty-six cents for that year; he was likewise permitted to testify over the same objections that Marzec had a net income of Forty-five thousand five hundred fifty-two dollars and seventy-nine cents, a tax liability of Fourteen thousand four hundred eighty dollars and eighty-nine cents, and still owed the government Nine thousand four hundred three dollars and seventeen cents for the year 1950. He was likewise permitted to testify that if the taxpayer had filed an amended return disclosing an additional income of Forty-one thousand eight hundred twenty dollars and no cents not reported in his original return for the year 1950, his tax liability on the amended return would be Twenty-

six thousand five hundred fifty-one dollars and twelve cents and that if the original return had disclosed a net income of Ten thousand seven hundred eighty-nine dollars and forty-three cents and a tax of One thousand three hundred ninety-seven dollars and sixty-four cents, additional tax due and owing for that calendar year would be Twenty-five thousand one hundred fifty-three dollars and forty-eight cents.

529 Thereupon the following proceedings occurred:

By Mr. Manion: At this time, your Honor, the Government would like to offer in evidence—

By the Court: Do you have any further witness?

By Mr. Manion: No, your Honor, I do not.

By the Court: What?

530 By Mr. Manion: No, your Honor, I do not.

By the Court: Have you advised counsel?

By Mr. Manion: Yes, I advised Mr. Struett at noon that we expected to finish.

I have several documents which were identified by witnesses in the course of the trial which I have not yet offered in evidence, Government's Exhibit 30 for identification, being the purported 1099 form testified to by the witness Samels and the witness Wilson.

By Mr. Struett: Wasn't that identified?

By Mr. Manion: Yes, it was. And I offer Government's Exhibit 31 and Government's Exhibit 32 for identification in evidence, correspondence between the accountant, Samels, and the accountant Wilson. And I offer Government's Exhibit 37 and Government's Exhibit 36 for identification, identified by Mr. Wolfe.

By the Court: Any objection to any of these?

By Mr. Struett: No.

By the Court: They may be received.

531 (Said documents, so offered and received in evidence, were marked respectively GOVERNMENT'S EXHIBITS 30, 31, 32, 36 and 37.)

By Mr. Manion: The Government rests its case on direct.

By the Court: Just a minute. You wanted to make an offer, Counsel?

By Mr. Struett: What?

By the Court: You wanted to make an offer of evidence?

By Mr. Struett: I don't remember now what it was, Judge. I am sorry, but I just don't remember what it was.

By the Court: The Government rests. You be ready to go ahead with the defense in the morning at 10:00 o'clock.

Thereupon the Government Rested its Case.

By the Court: The jury may return here at 10:00 o'clock tomorrow morning.

(Jury excused.)

By Mr. Struett: Your Honor, I am just not able to go ahead.

By the Court: Oh.

532 By Mr. Struett: Well, I am not. I am just not able to in fairness to myself and in fairness to my client. I will be ready Monday morning. I just can't do it. There is a limit here. I stood here all afternoon half sick. I have got to go home and go to bed. I slept about three hours last night. Now, there is just a limit to this thing.

By the Court: Go home and go to bed.

By Mr. Struett: How am I going to be prepared to go ahead at 10:00 o'clock in the morning? I haven't talked to my client. I haven't talked to my accountant. In fairness, I can't do it to my client. I will be ready Monday morning. I assure you I will be ready Monday morning. I assure you I will go through and go through fast.

By the Court: How many witnesses will you have Monday morning?

By Mr. Struett: Not more than three.

By the Court: Any objection?

By Mr. Manion: We have no objection.

By the Court: Bring in the jury. Listen, Mr. Struett. Mr. Struett, listen. Now, I am relying on your personal word to go ahead Monday morning.

533 By Mr. Struett: Unless I am in the hospital I will be here. I will go ahead.

By the Court: Oh, there is no hospital to it.

By Mr. Struett: All right, by golly.

534 By the Bailiff: Some of these jurors have left.

By the Court: The money it costs the United States. Tell the rest of them they needn't come in. When the others come in tomorrow morning tell them the case went over to Monday morning at ten o'clock.

What is your judgment, your best judgment as to how much time it will take after ten o'clock Monday morning?

By Mr. Struett: I think, if you want to give us a little time on this, I will give it to you now, but I would like to talk to them.

I think, your Honor, may be against me and I want to make an offer of proof on it and I want to save time on it. That is on this conversation at Mr. Tieken's office. I gather your Honor doesn't think that is material.

I will make an offer of proof.

By the Court: I think you got that idea out of your head.

By Mr. Struett: What?

By the Court: I think you got that idea out of your

535 head.

Mr. Struett: All right, I will make my offer of proof.

By the Court: You offered lots of things here that you didn't think were admissible.

By Mr. Struett: What?

By the Court: You offered a lot of things here that you didn't think were admissible.

By Mr. Struett: What did you say?

By the Court: I say, you offered a lot of things that

you didn't think were admissible at the time, and you were just trying it out.

By Mr. Struett: Judge, I am telling you, I bet it is all admissible. You can scream at me, but I bet you a dollar it is all admissible.

By Mr. Manion: I think the record should show that the Court has not screamed at counsel for the defendant.

By Mr. Struett: What do you want to bet?

By the Court: I don't think I want to make a bet.

536 By Mr. Struett: I'll bet you—can we get together and can we make that stipulation, make that offer and be done with it.

By the Court: I don't care.

By Mr. Struett: Can we do it? All right.

537 (Proceedings of February 11, 1957.)

At the opening of court, counsel for the defendant presented motions for directed verdict, to declare a mistrial and for a continuance. In the course of this argument, the following proceedings transpired with respect to the argument on government Exhibit 33, Sobieraj's book:

545 By the Court: What is your point?

By Mr. Struett: I do not think we should be compelled to go ahead in this case.

546 Now, as far as I am concerned, I never had this book. The first time I examined this book was yesterday. I think, your Honor, that this case closed with this book in here without proper cross examination, I think my motion to withdraw a juror is sound. I can only give it to your Honor.

By the Court: When did this book come into the hands of the District Attorney?

By Mr. Manion: On approximately the 12th of January. It was the day before Mr. Sobieraj entered a plea of guilty, your Honor. Now, in reply to what Mr. Struett is saying at this time, in the course of this trial on Tuesday or

Wednesday of last week after the close of the afternoon session I advised Mr. Struett and Mr. Rieger and Mr. Marzec, who were all at the counsel table, at that time that inquired of me what the Government intended to do with
regard to giving the defendant Marzec credit for in-
547 come received by the defendants Brandt and Sobieraj
who had pleaded guilty.

As the Court knows, the Government in a case of this nature is not required at all to give the defendants credit for any unreported deductions, but under the theories of the Bender and Horstein cases we can rely on such deductions and expenses as appear in the return.

However, we advised counsel and the defendant Marzec at that time that we believed that in the nature of the entire case in justice we should give him such credit for unreported deductions as we could establish, and we told them then we intended to introduce the records of the Government's Exhibit 33 and we told them that it would substantially record the receipt of approximately forty per cent of the commissions which the defendant Marzec had previously contended he had paid to the defendant Sobieraj.

We told them we were not able to confirm or deny
548 through Mr. Brandt the amount received by Mr. Brandt
for any total year because the total amounts submitted to us by Mr. Brandt were in excess of the amounts claimed by Marzec for either tax years, we had given arbitrarily credit for the full tax claim by Marzec, however we told them as to Kusper we had not been able to find any records to verify the claims of the defendant Marzec. The records of the defendant Kusper and defendant Marzec were substantially the same.

Defendant Kusper still denies receipt of any other funds, that we would still stand on the income tax returns as to the receipt of those moneys.

We have not misled Mr. Struett or Mr. Marzec at any

time as to what we had planned to do here. We went further than what the law obligates us to go in giving them credit for this. This record was not clearly introduced, and the agent so stated on the stand, for the purpose of any additional income of the defendant Marzec; rather,
549 we are taking income out of his hands by offering evidence of unreported deductions to which he had been entitled to his income tax computations.

550 By Mr. Struett: I'm sorry. I don't agree with you.

If your Honor please, I want to call your attention to one more matter.

I am not well. I can hardly stand up this morning. I have got a heart block; I have got my ulcer that came back on me yesterday afternoon. I have had pain all the time.

If your Honor wants to go ahead, I will go ahead to the best of my ability.

By the Court: I think we should go ahead.

When you take a retainer you take an obligation to your client, and you take an obligation to your Court, and you take an obligation to society.

By Mr. Struett: I understand that, your Honor. I have not had adequate time and have done the best I could to prepare this.

By the Court: I have held that you have had adequate time to prepare this case and I am still of that opinion.

By Mr. Struett: I am not prepared. I will do the
551 best I can, your Honor.

By the Court: If you are not prepared, it is your own fault.

By Mr. Struett: Presuming it is, your Honor, my client should not suffer under that.

By the Court: I cannot exercise good judgment for you. I can give him a fair trial and that is what I am trying to do. I want you to go ahead and give him a fair trial.

By Mr. Struett: I will go ahead and do the best I can.

If I need some time, if I am not well, I will call it to your Honor's attention.

By the Court: You have been talking about time ever since this case started, or shortly thereafter, and I want you to go ahead and try this case; perform your duty not only to your client, but to the Court and society.

Bring in the jury.

By Mr. Struett: May I have a ruling on these motions, if your Honor please?

552 By the Court: Motions are denied. Bring in the jury.

AUGUST F. MROZ, being first duly sworn, testified on behalf of the defendant:

553-575 *Direct Examination.*

The witness was employed from 1946 to 1950 as an assistant to Kusper, the general counsel of the P. R. C. U., handling the legal details of making loans under Kusper's supervision. Shortly before testifying, he conferred with Mr. Manion and Mr. Worcester at the witness' home and the matters concerning which he was about to testify were in substance what he told those gentlemen at that time. The witness had become acquainted with a broker by the name of Max Miller through the loan department of P. R. C. U. In addition he had occasion to meet brokers Harold Schrader, J. Cutler Sheldon, Hoppe and Scott at the escrow department of the Chicago Title & Trust Company in connection with loans made with the P. R. C. U. The witness had talked many times to Mr. Miller. Miller would tell the witness to rush matters through as fast as he could because the witness was to pay a certain percentage of commissions to Mr. Marzec. Sometimes he would say, "Yes sometimes I have to pay as high as five per cent."

Mr. Miller usually referred to Mr. Marzec as the "pay-off man" at the P. R. C. U. in the treasurer's office. He also testified that Mr. Miller usually mentioned he had to see that Joe Marzec paid one per cent to the general counsel. The witness said, "Is that so?" Miller said, "Oh, yes." Miller also said, "Yes, one per cent to each of the other boys." Miller told the witness that the other boys were some men in the treasurer's office connected with the loans.

561 Thereupon the following proceedings occured:

Q. Now, did you during the course of your conversation or in your work as aforesaid, when you concluded certain loans with Mr. Miller at the Title and Trust Company, did he ever deliver to you any envelopes to be delivered to Mr. Kusper

By Mr. Manion: I object to the materiality of that, your Honor.

By the Court: What is your theory as to the materiality of that?

By Mr. Struett: My theory of the matter is very simple, your Honor. We are going to produce direct evidence that Mr. Marzec paid Mr. Kusper these commissions and we have got a right to corroborate them by circumstantial evidence as to the method of operation of this man Kusper. Now, I mean that is just basic. If I have to go ahead and prove that Kusper got these commissions, I have a right not only to prove it by direct testimony of Mr. Marzec, but

I have a right to corrobrate it by circumstances in this 562 case. In other words, if they, for instance, were trying Mr. Kusper, they could prove not only by Mr. Marzec—

By the Court: But you are having this witness testify to a conversation with whom?

By Mr. Struett: Mr. Miller.

By the Court: Mr. Miller was on the stand. You didn't lay a foundation for impeachment.

By Mr. Struett: I asked him if he had any dealings with these people and he said no.

By the Court: You didn't lay a foundation for impeachment.

By Mr. Struett: Well, I would just as soon make an offer of proof here and be through with it, your Honor.

By the Court: Is there any objection to this? What is the pending question?

By Mr. Manion: The last pending question, your Honor, was as to whether or not Mr. Miller had delivered envelopes to Mr. Mroz to be delivered to Mr. Kusper. If it is for the purpose of corroborating direct evidence, I submit that
563 direct evidence should probably be introduced first.

By Mr. Struett: This man is going to the hospital this afternoon, your Honor.

By Mr. Manion: I have no desire to keep Mr. Mroz here if he is going back to the hospital. We know he has been under hospitalization—hospital treatment for some time. Does this relate to direct evidence you intend to introduce?

By Mr. Struett: It certainly does.

By Mr. Manion: By Mr. Miller?

By Mr. Struett: That is right. Mr. Miller said he never gave that woman Blanche any checks. It is all tied in together.

By Mr. Manion: I don't think that is what he said. Do you want to go to the record?

By the Court: Is there any objection?

By Mr. Manion: I object, yes, your Honor.

564 By the Court: Step into the jury room, ladies and gentlemen.

(And thereupon the jury retired to the jury room.)

(The following proceedings were had and taken outside of the presence and hearing of the jury:)

By Mr. Manion: If your Honor please, the Government's

position in this, briefly, is this: That we have no objection to Mr. Mroz's testimony with regard to any payments he delivered to Mr. Kusper if he in fact can testify to such payments. We have a pending indictment of Mr. Kusper and we certainly want to refuse evidence which will tend to prove our own indictment.

At the same time, the way Mr. Struett is offering this evidence is a little unclear to us, whether he is intending to impeach Mr. Miller, which we don't think he can properly do by this witness. And if Mr. Mroz is going to be able to testify as to payments to Mr. Kusper in addi-
565 tion to such payments as are claimed by Mr. Marzec in his tax returns and as has been admitted by Mr. Kusper by his records, we are very much interested in hearing such evidence if Mr. Struett assures us we are going to hear that kind of evidence, and I have certainly no objection to this man's testimony then.

By Mr. Struett: As the jury is out, I will make my offer of proof, your Honor. I think it is all competent, all relevant and all material to proof in this case, and I have given it some consideration.

May I make my offer of proof?

By the Court: Make your offer of proof.

By Mr. Struett: I offer to prove by this witness that sometimes when the loans of Max Miller were completed at the Chicago Title and Trust Company, Mr. Miller would hand him a sealed envelope and ask him to deliver it to Mr. Kusper; and upon this witness' inquiry of Mr. Miller "what is this?" Miller in substance would say, "This is a payoff to Kusper."

This witness would then deliver the envelope to Kusper.

That on one occasion Mr. Miller advised this witness that there was around $5,000.00 in the envelope.

I also offer to prove by this witness that he is in a posi-
tion to state—

By the Court: That he what?

By Mr. Struett: That he is in a position to state and testify from his activities in and about said Union, as he has detailed them heretofore, that it was common knowledge among the people working there that these brokers were paying these commissions to Mr. Marzec on these loans and that they were being split between the treasurer, the appraiser and the chief counsel.

Further, I offer to prove by this witness that Mr. Miller told this witness that Mrs. Stanley Kusper would see
567 Miller on Saturday mornings and make collections in her maiden name.

And I further offer to prove by this witness that that was substantially what he has heretofore testified to and what is contained in his offer of proof, what he told Mr. Manion and Mr. Worcester when he had his conversation with them.

By Mr. Manion: I would object, your Honor, to the materiality or competency, of any of this evidence to the issues in this case. If, in fact, Mr. Miller was making payments to Mr. Kusper, that is pertinent, most certainly, to the Kusper trial; but we submit it is not pertinent to this issue.

According to Mr. Struett, these monies would come directly to Mr. Miller, not via Mr. Marzec, and would have no value to Marzec whatsoever. We definitely want to talk to Mr. Mroz about it, if it is true; but we don't think it is material in this case.

As to conversations had between Miller and Mr.
568 Mroz, we submit that those are not material to the issues in our case.

As to these payments to Mrs. Kusper that Mr. Struett is referring to, I can see the only reason those would be probative at all, if at all, would be for the purpose of im-

peaching the witness Miller, and we do not believe Mr. Struett laid a foundation for such payments.

We know, as a matter of fact, that there were payments made into the name of—not to Mrs. Kusper—but to Mrs. Kusper's brother; but such payments were made prior to the tax years we have in question in this trial and Mr. Struett did not inquire of Mr. Miller anything other than payments as to Blanche and Blandette Wiersbicki.

By Mr. Struett: You told me, you had me confounded on the name. I will offer my proof on that.

By Mr. Manion: Nobody tried to confound you on anything, Mr. Struett. You could have asked him about
569 the time he was on the witness stand.

By the Court: I cannot see why these objections aren't good.

By Mr. Struett: I make my offer of proof and I think it is all material and relevant, if your Honor please.

By the Court: Have you completed your offer?

By Mr. Struett: Yes.

By the Court: Do you object?

By Mr. Manion: Yes, I do, your Honor.

By the Court: On the grounds you have stated?

By Mr. Manion: Yes.

570 In addition to these grounds Mr. Struett has also mentioned Mr. Mroz' testimony regarding general knowledge at the Polish Roman Catholic Union of Mr. Marzec as a collector. We believe that is apparent too from the evidence in this case. That hasn't added to anything already introduced in evidence, that he was in fact a collector. We have introduced evidence ourselves as to payments to all three and as to payments to two in excess of the amounts shown in the tax return and claimed as deductions by the defendant Marzec.

By the Court: Objection sustained.

570–576 It was stipulated between the parties that the Regional Counsel's Office of the Penal Division is a separate and distinct part of the Bureau from the investigating agents and the audit and review section; that it is under the chief counsel of the Bureau of Internal Revenue; that the people working there passing on these cases are lawyers rather than special agents, and that it is the final place within the Bureau where an income tax case is passed upon before it is sent to the Justice Department with the Bureau's recommendation for prosecution. The Government's objection to this stipulation on the grounds of materiality was sustained. Thereupon ensued a colloquy between counsel and the court concerning the Grand Jury minutes.

JOSEPH T. MARZEC, being first duly sworn, testified on his own behalf:

576–684 *Direct Examination.*

The defendant testified that he lives at 4182 West Barry Avenue, has a family of four children the oldest of which was 17, and the youngest, 5. He went to the seventh grade in grammar school, then took a commercial course at a small private school, went to work at 15 at a manufacturing company, first as a filing and billing clerk and then bookkeeping, and then studied bookkeeping and accounting at Northwestern as a special student. He started to work for the Polish Roman Catholic Union in 1937 and his duties were substantially as testified to by Mr. Kobylinski. He obtained an Illinois Real Estate Broker's license in 1945. While working for the Union in 1946, he made a few loans for brokers, got a commission on them and split the commissions between Sobieraj, a few directors, and himself.

In the fall of 1946, there was a new election of officers of the Union. Brandt was elected Treasurer and Marzec supported another slate. A short time thereafter, Brandt called him in, asked if he had made loans, Marzec said he had not, and Brandt said he understood that he had and was receiving commissions. He then talked to Sobieraj, who was the appraiser of the Union, who told him not to tell Brandt anything, since he, Marzec, was on the wrong side of the fence and that Brandt was sore at him and was going to fire him. A short time later, Brandt again called him, Marzec, in and said, "Something is going around, I can't put my finger on it". Marzec told him he did not know anything. Marzec then went back to Sobieraj and told him that the boss asked him again, and Sobieraj told him, "You had better keep your mouth shut until I straighten it out with him. I will straighten it out myself." Brandt then called Marzec in a third time, told him that the convention was over, that Marzec knew what was going on, and that he, Brandt, wanted to make a buck while he was there. Marzec then told him that these brokers brought in loans which first went to the Treasurer's office, then Sobieraj would make the appraisal, and when the loan goes through, the commission is distributed. He also told him that Kusper had control over it through a broker by the name of Boksa, who handled most of Miller's loans. These conversations with Brandt took place shortly after the convention in the fall of 1946, and as each of them occurred, he told Sobieraj about them. In his subsequent conversations with Brandt, Brandt asked Marzec to find out about the Boksa loans and whether Kusper had anything to do with them. He then went over to Miller's office, told him that Brandt wanted to know about the deal on the loans. Miller then gave him two of his checks made payable to Blanche Wiersbicki, Kusper's

wife's maiden name. Marsee showed the checks to Brandt and returned them to Miller.

At the third conversation, Brandt told him to go over and see the brokers and tell them that thereafter any loans they wanted they would have to talk to and contact and deal with Marsee. He also told Marsee that he wanted one per cent—one point—in cash. Marsee then told Sobieraj of his conversation with Brandt and Sobieraj said, "If Brandt is getting one point, I want one point." He also said that the appraisal was not good without his signature since they had to have an outside appraiser, and therefore "I am entitled to it." Then Kusper stopped him in the hall and stated he understood that Marsee was taking over the collection on these mortgages. Kusper said, "Don't forget, I am the attorney here. If Brandt gets one point, I get one point." Kusper said, "I am just as important here as he is." Marsee then contacted each of the brokers involved, told them substantially that he had been designated by Brandt to collect the commissions, and if they did not think that was correct, "You send in your applications, and you will find out they will be rejected." He contacted Miller, Schrader, Scott, Milton, Hoppe, Sheldon and Banash. Some of these brokers came in to see him at the office; others he went out to see.

He received these commissions either by checks payable to himself, cashiers checks endorsed and cashed by him, checks payable to cash, some endorsed by him, and in cash, much as detailed by the brokers who testified, and in the percentages testified to by the brokers. Miller would pay five percent where the checks were made payable to Marsee, and four percent where the checks were payable to cash and endorsed by Marsee. As to the commissions paid to him by check, most of them were deposited in his personal bank account. Most of the cash and cashiers checks were cashed. He distributed Kusper's share of the commissions

received by check to Kusper by checks payable either to Kusper or to Repsuk. Sobieraj's share was distributed by checks payable either to Sobieraj or to his partnership, W. Stanczewski & Co. At the beginning, he drew checks payable to Kusper; then Kusper stated that he did not want his name to appear so Marzec was henceforth to make the checks payable to Repsuk. Brandt's share, even of the commissions received by checks, was paid to him in cash. The commissions received in cash, by cash checks and by cashiers checks were distributed in cash, one percent each to Brandt, Sobieraj, Brandt and Kusper. On the Scott loans where three percent was involved, Brandt received one percent and there was a division of the balance. Kusper also received a little less on the Banach loans. In distributing these cash commissions to Brandt, Sobieraj and Kusper, Marzec would take a piece of paper, put on it the address of the building, the amount of the loan, and the amount of the commission. He would roll this paper around the cash, put a rubber band around it, and give it to each of the recipients, who knew what building and broker were involved.

Defendant's Exhibits 21 to 31 inclusive, were commission checks from Marzec given to Sobieraj for his distributive share of the commissions received, duly endorsed and which do not appear in Sobieraj's little black book (Government's Exhibit 33).

Defendant's Exhibit 26 for identification was a receipt given Marzec by the agent Osheroff on September 28, 1951 for checks which Marzec had given Kusper and Sobieraj.

Just prior to the noon recess, the Government objected to the materiality of a question as to any changes in the general method of operation subsequent to 1951. Thereafter, counsel made the following offer of proof:

625 "By Mr. Struett: If your Honor please, I want to prove by this witness that in 1951 the arrangement

testified to by him as to the sharing of these commissions was changed to a certain extent in that Mr. Kusper did not share in these commissions, and there are other details involved in that.

Then in 1952—

By the Court: Wait a minute. When was the first one?

By Mr. Struett: 1951, if your Honor please. The years of the indictment are 1949 and 1950.

626 By the Court: Yes.

By Mr. Struett: Then in 1952, Mr. Sobieraj came to him after there had been a change in certain offices of the Union, and stated that henceforth he was to have two per cent or two points of the commission; that is, if it was four per cent, he was to be paid half of that, he, Sobieraj; that he, Mr. Marzec, took the matter up with Mr. Brandt and told him what Sobieraj told him, Marzec; that Mr. Brandt then said, "Well, if that is the situation, he will have to have two per cent."

That thereafter under all these billings Mr. Sobieraj received his two points; that is, if it was four per cent, he received two per cent or two points, as Mr. Marzec says.

And that at that time all of these commissions that Marzec received were paid to Mr. Sobieraj by check, and Mr. Marzec has the checks in his pocket, he checked his records.

I want to offer those checks.

627 And then I want to offer the further testimony—offer to prove by this witness that as to the balance of the two percent of the two points or two percent, Mr. Marzec reported or picked up for his income tax purposes the other two per cent and then paid Mr. Brandt in cash, paying Mr. Brandt approximately one third of the two percent that Mr. Marzec kept.

And I offer that proof by this witness with all the supporting data and detail, his checks and records, and so forth and so on.

By Mr. Manion: We object to the offer, your Honor, on the grounds that the stated testimony in evidence has no probative value in this case and are not material to the issues of the case.

By the Court: Objection sustained.

• • • • •

Now I offer to prove by this witness, and he will so testify, that around September of 19—where are those other exhibits I offered this morning, the photostatic
628 copy?

By way of preliminary to that proof, I want to state this to your Honor:

There is identified a receipt by Mr. Osheroff of certain of these Repsuk and Sobieraj and Stanczewski checks. There are also identified certain of those checks, the checks themselves having been identified.

Part of these checks were returned to Mr. Marzec on June 13, 1952, and the balance of those checks, Government's Exhibits 25-A to, I believe it is, I, which have been identified, still remain in the agent's hands.

That Mr. Marzec communicated with Mr. Miller, he will so testify, told him his attorneys could not get those checks; that Mr. Miller said he would take the matter up with Mr. Wolfe, and then he called Mr. Marzec, said he
had taken the matter up with Mr. Wolfe, that is Spe-
629 cial Agent Wolfe, who testified here, and that Special Agent Wolfe would bring them over to Mr. Rieger's office.

I offer that proof.

By Mr. Manion: We will object to the materiality of that, your Honor.

By the Court: What does it prove or tend to prove?

By Mr. Struett: It tends to prove my theory of this case, your Honor.

By the Court: And that is?

By Mr. Struett: This whole situation is entitled to be developed before this jury.

By the Court: Is that all?

By Mr. Struett: Yes.

By the Court: Sustained. Bring in the jury."

After Osheroff had been in to examine his books, Marzec had a conference with broker Miller, who advised him that Osheroff had told Miller that neither Brandt, Sobieraj or Kusper had reported the cash received from these commissions. Marzec then questioned Sovieraj who stated that he thought that Marzec had paid the tax. Marzec asked him since when he was responsible for Sobieraj's income tax.

Shortly thereafter, Sobieraj called Marzec and asked him to go to dinner and told him that he, Sobieraj, had a friend he wanted to take along. Sobieraj said that the friend worked in the Federal Revenue Department. The dinner was held at Como's restaurant on Milwaukee Avenue. At this meeting, they went through the procedure about these cash commissions, and Sobieraj's friend asked, "Was there anybody present at the time?" When Marzec said there was not, the friend said, "In that case, it would be pretty hard to prove the cash". (On objection of the Government, this testimony was stricken as immaterial.)

Marzec also talked to Brandt about what Miller had told him. Brandt asked Marzec if he had paid the taxes. Marzec told Brandt, "With the amount of money I distributed, and what is left to me, how can I pay everybody's tax?"

Later Marzec had another conference with Miller who told him that he had talked to Brandt, Kusper and Sobieraj and they told Miller that the latter should advise Marzec to get a lawyer (this testimony was also stricken on the grounds of immateriality). Marzec told Brandt of the conversation with Miller, and Brandt said, "that is correct, you get yourself a lawyer because this cash is not

disclosed and we will settle this matter later on after the investigation is completed." Marzec then talked to Sobieraj concerning this conversation and Sobieraj told him, "Just keep quiet—when this is all investigated, when it comes to a head, we will settle the bill." Marzec then went to Miller who recommended Tyrrell Richardson; Marzec, Miller and Richardson then discussed the entire case. (The court refused to permit the witness to testify that he paid no money to Richardson at the time he employed him.)

Richardson recommended Wilson. Wilson came to Marzec's home around November or December of 1950, told Marzec how good he was, how many cases he had handled, that his clients were satisfied, and that he had worked for a few years with Richardson. Then Marzec brought his records over to Wilson's office. He told Wilson that there was involved a question of commissions which he had collected and paid out to the treasurer, the appraiser, and the attorney. He told Wilson that there were checks and cash and that, from the information he then had, none of the cash was reported. Wilson then advised him, "If it isn't reported, there is an investigation going on, and the best thing is to say nothing about it, let it come to a head, and then we will settle it."

Marzec had a conversation with Wilson concerning the form 1099 which Banach had forwarded to him, showing payment of $39,820.00. Marzec told Wilson that the amount involved was out of proportion, and Wilson told him that if he reported this money, "This will disclose that there is cash being paid out" and you will have to forget about it. Wilson then stated, "I will send this back and tell them we never got the money." Marzec never saw the letter which Wilson received from Samuels, but was told about it. About the time the 1950 returns were to be filed, Wilson told Marzec that he was working

on the case, trying to settle the whole thing without disclosing how the divisions were made. If they finally came to a settlement, they could pick the amount up by way of an amended return, and by so doing, it would probably show overpayment or over-reported income in the total tax. Then Wilson filed an amended return in June of 1951, picking up the $39,820.00.

Marzec was interviewed on April 12, 1951 at a conference in the Intelligence Unit of the Bureau and Defendant's Exhibit 15-A portrayed what occurred at that conference. Prior to the conference, Marzec told Richardson that he should go there since Marzec "cannot talk." Richardson told Marzec the latter had to go and suggested Wilson go along. Marzec discussed what they should say with Richardson. The latter stated that they probably would ask Marzec if he got cash and that, if Marzec disclosed it, the matter would be wide open and there would be an investigation of all of the officers. Richardson further advised him that if he did not disclose, "You will stay in one place and when it gets to the proper channels, we will settle it." Marzec then had substantially the same conversation with Wilson.

Defendant's exhibit 32 was a check dated June 21, 1952 payable to Richardson. The court refused to permit the witness to show that it was the first money he had paid Richardson or the only money that he had paid him and under what circumstances this money was paid to Richardson.

Marzec was present at a meeting held in the Regional Counsel's Office and attended by James T. DeWand, special attorney, Mr. Riewer, Richardson, and Wilson. (The court refused to permit Marzec to testify that after this meeting he had a conversation with Miller.) Thereupon the following proceedings occurred:

660 "Q. Did you then have a conversation with Mr. Brandt about this claimed meeting?

A. About the meeting?

Q. Yes.

A. Yes, I talked to him about this meeting. I said, 'Our attorney' that we had, 'evidently is not telling the truth, he has everything twisted.' I said, 'There is something wrong here', and I did not know what it was.

Q. What did he say?

A. Well, he said everything would straighten out by itself, 'if you wait, this thing will come to a head and we will get our bill to pay.' And he added to that, 'We are going into this year here. We are elected officers. We
661 have all the good years to make the money because we will make the loans.'

Q. Now, did you ever see or hear—hear from or see Mr. Richardson or Mr. Miller after these proceedings which took place in the Regional counsel's office as of September 12, 1952?

A. Thereafter I did not see any of them. In fact, I talked to Mr. Miller about locating Mr. Richardson. I finally got his place of business. I went over to see if I could talk to him. He had just a small cubbyhole in an office and Wilson the same way.

Thereafter, I did not hear from them any more.

662 Q. Now, I show you Defendant's Exhibit No. 16 and 16-A marked for identification and ask you whether or not you have ever seen that letter or a copy of that letter before it was produced in court by Mr. Wilson the other day?

A. No, I never saw the copy or original at any time.

Q. Now, when was the first time that you discovered that the case against you had been forwarded to the Department of Justice?

By Mr. Manion: I object to the materiality of that question.

By the Court: Sustained.

By Mr. Struett:

Q. You later found out this case was in the office of the United States Attorney, did you not?

A. Yes, I did.

Q. And you employed new counsel?

A. That is right."

Defendant's Exhibits 34 to 42 were notes kept by Marzec as he paid out money; they included the years 1949 and 1950 but were not complete. He searched for the others. He delivered these notes to the United States Attorney's office in August, 1955 in company with Mr. Hauptman and Mr. Rieger.

Thereafter a colloquy ensued between counsel for the defendant and the court concerning the defendant's theory of the case, at the close of which the following occurred:

671 "By Mr. Struett: I am going to make a complete offer of proof as to what each witness would testify to, and I have got that right here.

By the Court: Hereafter, you listen to what I say to you. I asked you if that was all you expected to prove and you said that was substantially all, whereupon I asked if there was an objection and I ruled.

Now you pay attention to what I ask you.

By Mr. Struett: May I make my offer of proof now?

By the Court: I thought you made it, but now go ahead and make it and make it complete and as quickly as you can.

By Mr. Struett: It will take me quite a little itme.

By the Court: I haven't any doubt it will.

By Mr. Struett: I offer to prove by this witness that

at the time he employed Mr. Tyrrell A. Richardson he was not asked for any money and he gave Mr. Richardson no money.

672 That he paid Mr. Richardson no money until June 21, 1952, at which time he delivered to him a check, Defendant's Exhibit No. 32 for identification for $500.00. That it was delivered to him in the presence of Mr. Miller and Mr. Richardson—

By the Court: Not "him." Will you please make a definite statement of what you intend to prove. Who is "him"?

• • • • •

By Mr. Struett: It was delivered to Mr. Richardson. I beg your Honor's pardon. In the presence of Mr. Miller. Mr. Richardson then wanted a thousand dollars. Mr. Miller said, "Give him $500.00."

And that was all the money that he at any time paid
673 Mr. Richardson. I then offer to prove by this witness that after the hearing in the Regional Counsel's office on September 12, 1952, he went back to Mr. Miller and asked him what was happening, whether these people were double-crossing him and whether Richardson was double-crossing him.

Mr. Richardson said, "No, that is just part of the plan. Say nothing, do nothing."

I offer to prove by this same witness that from September 25, 1952 he had no knowledge whatsoever of the status of his case, that during the same period of time he was being assured by Mr. Miller that the matter would be settled, and "just wait," they would get the bill.

674 In the fall of 1952 he was told by Mr. Miller that he would have a Christmas present for him and that the whole case would be settled when he got back and that the bills would be paid and everything would be over.

That in the summer of 1953 when he went on a fishing trip he was told that when he got back—

By the Court: Now, I asked you to quit using pronouns and use names. "He was told." Who told him.

By Mr. Struett: Mr. Miller, that it would be a short time. By the time he got back this case would be settled and everything was going fine.

That was sometime in September of 1953, a year later, Mr. Miller came out to the office and told him that he was in trouble, that he was going to be indicted and that he would go to the penitentiary.

By the Court: He? Who?

By Mr. Struett: Mr. Marzec.

By the Court: Now do not have me ask you that again. Now, just tell me what you want to tell me and name the persons.

675 By Mr. Struett: That then Mr. Miller sent him to another lawyer who was to make inquiry as to the status of the case. He found, this other lawyer—no, I mean, that then Mr. Miller advised him that the case was out in the United States Attorney's office ready for prosecution as to him only.

That he asked Mr. Miller what about these other defendants and Mr. Miller said that they had furnished the Government with affidavits that they had not shared in these commissions.

* * * * *

I now offer to prove by this witness that Mr. Miller then took him over to Mr. Rieger's office, that I was called into the case, the matter was discussed at great length, —and that later this witness, myself and Mr. Rieger appeared at a conference in the United States Attorney's office.

During the conference, I represented to those present, Mr. Tobin, was from the United States Attorney's office,

Mr. Crane was a special agent, Mr. Rieger was there, and I was there, and witness Marzec.

I represented to them in substance they did not have the right parties and the real people who got in this commission, that this witness, Mr. Marzec had much information available to them to establish that he had passed on these commissions to others; that he was willing to fully co-operate with the Government, make available to
677 them every fact that he had at his hands, and that during that conversation he was asked whether he would appear before the Grand Jury, sign an immunity waiver, and he stated that he would.

He was asked whether he would furnish or prepare a net worth statement to support his statements that he had paid these commissions to these other parties and he said that he would.

. . . . .

I will prove by other witnesses, I will just tie it in, that we were requested to get together a written statement of the facts supported by the documentary evidence; that this statement was prepared by myself, Mr. Rieger, comprising 120 pages; that it was supported by much doc-
678 umentary proof, and as I recollect, by these various sheets which I have mentioned.

I then offer to prove by this same witness that later on, November 8, 1954, this witness attended a conference in the office of the United States Attorney at which was present Mr. Reeb from the United States Attorney's office, Special Agent Wolfe, Special Agent Clement, and there is another agent's name—Freiberger, and at that time this statement which comprises 120 pages was delivered to Mr. Reeb; that thereafter in August of 1955 this witness, together with Mr. Rieger and his accountant, went over to the United States Attorney's office and delivered to the United States Attorney Reeb in the presence of this wit-

ness, photostatic copies of originals of Government's
679 Exhibits—Defendant's Exhibits 34 to 42 inclusive.

• • • • •

That he gave them a complete summary of all of the transactions on those buildings for the year 1949 and 1950, showing the distributions of these commissions.
680 That at this conference—there was made available to the United States Attorney all of this Defendant's checks for these years, and that we had the net worth statement which had been prepared by our accountants which would show, in substance, the fact, bearing in mind the amended return filed herein, which is Government's Exhibit 3, this man had reported income possibly in excess of any income he was due to report, so it wasn't in the same years."

Thereupon the government objected to the offer of proof except insofar as it tended to contradict or deny the evidence offered by the government through the witnesses Wolfe, Osheroff, Riewer and Wilson.

Thereafter, the following occurred:

683 "By the Court: You don't intend to offer specific denials of those matters counsel referred to?

By Mr. Struett: I have no such intention of offering any such proof.

By the Court: Objection will be sustained."

684-717 *Cross Examination.*

The witness identified Defendant's Exhibits 15 to 15-B as being a true report of the hearing before the Intelligence Unit on April 12, 1951, and stated that he was under oath, that he denied receiving commissions from Banach even though he did receive them and that he had not reported these commissions in his tax returns though he kept a portion of them. The only records he had of the

receipt of those commissions were Defendant's Exhibits 34 to 42. He then detailed the various commissions he had received from various brokers and how he distributed them. He stated that he kept no records of the cash other than Defendant's Exhibits 34 to 42 which were not complete.

The witness identified government's exhibit 41, a summary of the commissions distributed for the year 1949 and Government's Exhibit 42, the same summary for 1950. These documents were prepared by Marzec from records available and mortgage transactions of which the Union had a record. His own personal records which he showed Osheroff recorded only a portion of the commissions he received from Miller and the checks from Hoppe. They did not include the cash he received from Scott and Milton. He did not tell Brandt between the first of 1947 and June of 1948 that if Brandt let him alone he would be willing to give him a share of the commissions he was collecting.

At the meeting on September 12, 1952, he denied the receipt of any cash from Scott because he was "not suppose to talk until they arranged the whole thing." He did not know that the case was in the United State's Attorney's office until he employed his present lawyers in September, 1953. He did not tell any representative of the United States government that he received these commissions until that time, "because I was not suppose to tell them"; he did not tell anyone from the government during the course of the investigation that he had shared these commissions with others.

He did not claim any deduction in his return for cash payments to Brandt, Kusper and Sobieraj. He did not show in his amended return that he had paid most of the $39,820 received from Banach to Brandt, Kusper and

Sobieraj; the only deductions in his returns were for checks paid to Sobieraj, Stanczewski, Stanley Kusper and D. Repsuk.

(Proceedings of February 12, 1957.)

722-739 *Direct Examination.*

The witness was one of the attorneys for Mr. Marzec in this case. He was employed in the latter part of 1953.

(Thereupon counsel for the defendant made the following offer of proof out of the presence and hearing of the jury).

723 "I offer to show by this witness on the stand that if he were permitted to testify he would testify that he had a conference with United States Attorney Robert Tieken at the United States Court House on February 24, 1955.

724 That the witness advised Mr. Tieken that Joseph A. Struett and he had been consulted by Joseph T. Marzec in October, 1953 in the Marzec tax matter. That the file had then been forwarded to the United States Attorney Otto Kerner on March 13, 1953 for prosecution against Joseph T. Marzec only.

That Joseph T. Marzec was a clerk employed by the Polish Roman Catholic Union, that he was not an officer or director and was not an appraiser; that he had nothing to do with nor any control over the appraisal of property on which loans were requested for, upon the acceptance or rejection of application, nor upon the amount of the loan to be granted.

I further offer to prove by this witness that Mr. Rieger —told Mr. Tieken that a conference was held in early 1954 with Assistant United States Attorney Mr. Tobin,

725 special agent intelligence Samuel Crane, the defendant, Joseph T. Marzec, Joseph A. Struett and this witness.

That Mr. Tobin was advised at that meeting that Mr. Marzec had had an attorney not of his own choosing, and an accountant recommended by said attorney during the investigation by the Internal Revenue Service.

That Mr. Marzec had offered to submit to the Government all his records and sheets of original entry and other evidence which would show that Mr. Marzec, the defendant, was only a collector, that he distributed the commissions that he received, in a regular pattern substantially as follows:"

* * * * *

(The pattern described was essentially that testified to by the defendant and is therefore omitted.)

* * * * *

727 "* * * that Mr. Tobin had stated at the conference that the Government had affidavits signed by Brandt, Sobieraj and Kusper, all of which were to the effect that they had not received any commissions from Marzec in cash."

That Mr. Tobin said that he had talked to Mr. Kerner about the matter, that the United States Attorney, Mr. Kerner, wanted to know whether Marzec was willing to sign an immunity waiver and appear before a grand jury, and Mr. Tobin was advised that Mr. Marzec would do so and would fully cooperate with the Government.

728 And that Mr. Tobin had requested that Mr. Marzec prepare a net worth statement, and further advised all the parties to that conference that Mr. Kerner had suggested or instructed that a letter be sent to Washington for instructions of how to proceed.

I further offer to show by this same witness that this witness advised Mr. Tieken, the United States Attorney, that Mr. Marzec had filed an amended return of his 1950 income tax, and had included additional income commissions of approximately $39,000.00 and that he had paid,

of that $39,000.00 approximately three forths of it having been distributed to Brandt, Sobieraj and Kusper; that this witness at the time exhibited to Mr. Tieken several blue sheets of original entry, which have been identified here as—Defendant's Exhibit No. 42—on which were listed
729 various loans, street addresses showing those loans rejected and those accepted, and the division of the commissions and to whom paid, and that said blue sheets were prepared at approximately, the date at the time and checked off as these loans were processed.

That in addition thereto, this witness exhibited to Mr. Tieken the original of two sheets, both of which have now been identified as Government's Exhibits Nos. 41 and 42 for identification, and that at the bottom of the last sheet, as would appear, that the defendant, though reporting of the additional $39,000.00 in his amended return and having made the distribution as Mr. Tieken was advised, he may have overstated his income, bearing in mind the amended return, by approximately ten or twelve thousand dollars.

730 That at the time, I further offer to show that at this conference with Mr. Tieken, this witness advised him that Mr. Marzec had prepared a written statement consisting of over 100 pages, which has been identified here as Defendant's Exhibits 19 and 20.

* * * * *

Which had been delivered on November 8th, 1954 to Mr. Reeb, then Assistant United States Attorney, at a conference at which were present Special Agent Clena of the Intelligence Division, Special Agent Wolfe of the Intelligence Division, Mr. Marzec, Mr. Struett and this witness, and at that time this written statement, typewritten statement, was given to the Government.

That in addition, at this meeting, this witness had in his possession a statement by one Dorothy Sipiora which has

been identified as—Defendant's Exhibit No. 22 which was made available to Mr. Tieken—later in the same day.

732 I further offer to prove by this witness that he advised Mr. Tieken that there had been no further investigation made of this case from the time of the first conference in February, 1954, until the then meeting, which was then approximately as stated, February 24, 1955.

I further offer to prove by this witness that thereafter on the same day in the afternoon of February 24, 1955, a conference was held in the office of Mr. Tieken at which this witness was present, and at which were present Mr. Lonsford, Chief of the Intelligence Unit, Mr. Freiberger, Special Agent of the Intelligence Unit, Leonard Wolfe, Special Agent of the Intelligence Unit, Arnold Baker, Special Agent of the Intelligence Division, Sam Crane, Special Agent of the Intelligence Division, Mr. Tobin, the United States Attorney, and this witness.

733 At this conference the entire case was reviewed, and this witness then delivered to Mr. Tieken and to the Government the statement of Miss Sipiora which has been identified as Defendant's Exhibit 22, said Dorothy Sipiora being the former legal secretary of Kusper, the general counsel of the Polish Roman Catholic Union.

I further offer to prove by this witness that on February 25, 1955, this witness had another conference with the United States Attorney in which Mr. Tieken advised this witness that the Marzec case had been referred to a special Federal Grand Jury for investigation; that on March 10, 1955 this witness held a conference with United States Attorney Robert Tieken and Assistant United States Attorney William Reeb, at which time he was asked to and did promise to produce Joseph T. Marzec as a witness before the Grand Jury on March 11, 1955, and assured

734 said persons that said Marzec would fully co-operate with the Government, testify against these other de-

fendants, and make available to them all his records and data, and all other evidence and information which would tend to prove that he had been only a collector, and that he had distributed most of these commissions which he had received to Frank Brandt, treasurer of the Polish Roman Catholic Union, Mr. Sobieraj, the appraiser, and Stanley Kusper, retaining approximately a quarter thereof where four per cent was involved for himself.

• • • • •

"• • • and at this conference Mr. Reeb stated that he had to have Mr. Marzec's testimony in order to prove the Government's case against the three other persons, should their case be presented to the Grand Jury and should they be indicted.

I further offer to prove by this witness that on March
735 11, 1955, Mr. Marzec and this witness were present in the office of the United States Attorney Tieken, and that this witness was advised that Mr. Marzec would be asked to appear before the Grand Jury, and that Mr. Marzec should take with him the statements that this witness had exhibited to the United States Attorney, which contained a list of the mortgage loans, the amount of commissions paid and the amounts of commissions paid to Brandt, Sobieraj and Kusper.

• • • • •

(Thereupon the government objected to the foregoing offer of proof on the grounds of materiality and as an imposition on the court. After further colloquy, the court ruled as follows:)

738 "By the Court: I can't see a thing in it except an effort of a defendant or prospective defendant in a criminal case to ingratiate himself with the prosecutor, not a thing. The objection will be sustained."

Thereupon the jury returned, JOSEPH T. MARZEC resumed the stand, and testified further on his own behalf:

Redirect Examination.

739–756 The witness was present when Government's Exhibits 41 and 42 were offered to the government. He prepared them from the original mortgage records that he had submitted to Osheroff when he started the investigation and in addition from Defendant's Exhibits 34 to 42. (Upon objection by the Government, the witness was not permitted to testify that he had never been asked concerning these documents or their contents by any government official up to the time of trial.) During the course of the Bureau's investigation, no one in the government had ever asked him if he shared these commissions with Brandt, Kusper or Sobieraj. He heard the testimony of Osheroff and Wolfe concerning the conference of September, 1951 in which he had allegedly refused to say anything. He did not remember such a conference; he had attended two conferences, the last being in the Regional Conferences and both being the conferences of which transcripts were produced at the trial.

He was present at a conference with Mr. Tobin, Assistant United States attorney at which he said that the government could have all of his records, whatever records he had made on these loans, and he would show them how the commissions were distributed. He also offered to submit a net worth statement and any other documents the government wished to have.

He was also present at a conference participated in by Mr. Reeb, then an Assistant United States Attorney, and he said that we have our statements here, everything in them is correct, and "we are offering this evidence." These statements were offered to the agents. Mr. Klenha

said he was not interested because Marzec, "could not prove or produce a witness who saw me passing money," and Klenha was, "satisfied with the evidence they had." The statements were left with Mr. Reeb.

Government's Exhibits 41 and 42 were part of the records delivered to Mr. Reeb in August of 1955. There were also some cancelled checks delivered.

The witness appeared before the Grand Jury and testified.

757–786 *Recross Examination.*

Marzec did not know whether he appeared before the Grand Jury willingly or not, but his attorney told him he would be a witness before the Grand Jury. (The United States Attorney was granted leave to open up the Grand Jury minutes and establish, through interrogation of the witness from them, that Marzec had been advised of his constitutional rights, had been told that he was not required to testify, that he was under investigation and that an indictment might be returned against him.) The witness again told how he had prepared Government's Exhibits 41 and 42 and again stated what documents he had furnished to the government.

Thereupon the following proceedings took place:

772 "By Mr. Manion:

Q. I show you two documents marked as Defendant's Exhibits 19 and 20 for identification, and ask you if those documents represent substantially all of the rest of the information or documents you furnished to the United States Attorney in this matter?

A. Not in detail, no.

773 Q. What other documents did you furnish to the United States Attorney, Mr. Marzec?

* * * * *

A. The original of this document here (indicating). This document Exhibit 46 was already in the possession of the Department.

Q. We talked about that document—now we talked about 34 through 42.

A. This exhibit here 42, was submitted. The statements were submitted.

Q. That would be Defendant's Exhibits 19 and 20 for identification?

A. That is correct.

Q. Now what other documents did you ever furnish the United States Attorney?

A. The distribution sheet that you saw there.

* * * * *

774 "Q. You are referring to these documents, Government's Exhibits 41 and 42 for identification?

"A. That is right.

In addition, the witness testified that he had submitted all the cancelled checks but that they did not tend to prove payment of commissions by the witness to others in excess of the amounts claimed in his tax returns. He further testified that the government had not challenged the accuracy of the commission payments claimed in his tax return.

Defendant's Exhibits 19 and 20 were not under oath or signed. The witness had given the government nothing to corroborate the figures in Government's Exhibits 41 and 42 as to total amounts but had given the distribution and percentages. The witness kept Exhibits 34 through 42 for identification which recorded the amount of the loan but not the dollars and cents payments to anyone.

The witness did not recall that Mr. Klenha, at the meeting of November 8, 1954, made it very clear to him that the government was not interested in receiving these documents unless it was understood that there was no promise

of immunity or any special consideration to be given to the witness in exchange for those documents. The witness stated that he would say that Mr. Klenha did not make that statement.

The witness did not recall that, at the same conference, Mr. Reeb told him that Mr. Reeb considered Defendant's Exhibits 19 and 20 as a "deathbed confession" on his part. He testified that Mr. Reeb had said he would take the documents and examine them.

The witness stated that he talked to Mr. Reeb briefly before he went to the Grand Jury in 1955, and he was asked a list of questions which had been previously submitted to and agreed upon by the witnesses' attorney. Mr. Rieger had advised the witness of the questions which were and had told the witness to answer these questions. No one within the government had offered him any inducement in connection with the documents which he furnished to the government.

Marzec's Grand Jury testimony was marked as Defendant's Exhibit 44 and offered in evidence. Counsel for the Government objected on the grounds that it was not material. Thereupon a colloquy concerning its admissibility ensued, terminating as follows:

786 "If Mr. Marzec wants to give such testimony, Mr. Struett should interrogate him.

By Mr. Struett: I will go right through it then.

By Mr. Manion: You don't have to go through that, Mr. Struett. Ask him the questions, unless you are impeaching your own witness.

By Mr. Struett: I move to declare a mistrial and the withdrawal of a juror. That is an irresponsible statement.

By the Court: Motion denied.

786 ***Redirect Examination.***

Mr. Marzec testified that he had paid over to Frank A. Brandt in his testimony before the Grand Jury on March 11, 1955. At that point an objection was made on the grounds that the use of the Grand Jury testimony was not proper redirect examination. Defendant's counsel asserted that since the government had interrogated the witness on part of the testimony, defendant's counsel was entitled to interrogate as to the balance. Thereupon, the court stated that all that the government had used in interrogation was the portion from page 578 down to the question, "And has your attorney advised you?" The court then sustained the objection except as to that portion of the transcript, and the following colloquy ensued:

791 "By Mr. Struett: If your Honor please, as I recall the testimony, he said, "You were told by your attorney you would be asked certain specific questions—"

792 By the Court: That wasn't the examination here, and—

By Mr. Struett: And that is all he testified so. That is my understanding of the record. And that is what the record shows.

By the Court: Now, you are talking about a different part of the record. I am talking about the Grand Jury minutes.

By Mr. Struett: I am talking about his interrogation of this witness if your Honor please.

By the Court: I have ruled. That is the end of it right now.

Thereupon the following rulings were had upon the admissibility of the defendant's exhibits:

798 "By Mr. Struett: Now I offer in evidence Government's Exhibit 32, the Richardson check of $500.00.

799 You remember your Honor excluded that testimony,

and I assume the same ruling will be entered on that as to this check.

By Mr. Manion: We object to that on the grounds of materiality.

By the Court: Objection sustained.

• • • • •

803 "By Mr. Struett: Now I offer in evidence Defendant's Exhibit No. 16-A and 16 which are the letter and the envelope which Mr. Wilson produced from his files which he got from the Regional Counsel's office advising that the case had gone to the Attorney General's office.

By Mr. Manion: I object on the grounds of materiality and relevancy.

By the Court: Sustained.

By Mr. Struett: Now I offer in evidence Government's —rather, Defendant's Exhibit No. 26 which is a check or receipt rather from Samuel J. Osheroff for certain checks he turned over to Mr. Wilson on 9/28/51.

By Mr. Manion: I object to that on the same grounds, materiality and relevancy.

• • • • •

804 I submit its only probative value is to establish these checks were delivered in fact by Wilson to Osheroff and I submit that is not in issue in this case.

By the Court: I don't see how it can do any more than to confuse the jury. Objection sustained.

• • • • •

805 Thereupon the court sustained objections that Defendant's Exhibits 25-A to 25-I, checks identified by the defendant and payable to "B. Rupsek" were not relevant to any issue in the case since they represented payments reported by Mr. Marzec in his tax returns and would only confuse the jury.

Likewise, the court sustained objections to Defendant's

Exhibit 9, being a statement of commissions paid by Miller to Marzec for the year 1948 and 1949, delivered to the agents in the early part of the investigation. The objections were predicated on the grounds of the best evidence rule, no foundation for its use to impeach, and no relevancy to any issue in the case.

An objection to Defendant's Exhibit 21, Agent Wolfe's receipt for the balance of the checks, was sustained on the same grounds as the objection to Defendant's Exhibit 26.

The court sustained an objection to Defendant's Exhibit 11, the affidavit furnished to the agents by Mr. Miller on March 5, 1952, on the grounds that Miller's testimony constituted the best evidence as to payments made by him and that no foundation had been laid for its use as impeachment evidence.

The court also sustained an objection, predicated on the fact that they were not impeaching, to Defendant's Exhibits 17 and 18, Sobieraj's affidavit of October 16, 1951 and his testimony before the Grand Jury, respectively, on the grounds that they were not impeaching since he had testified that the statements in the affidavit were false and nothing was shown as to the falsity or inconsistency between his grand jury testimony and his testimony in this cause.

Thereupon, the defendant moved for the production of the affidavits or statements of Brandt and Kusper, given to the government on about the same date as that of Sobieraj, October 16, 1951. The government's refusal on grounds of materiality was sustained, and the following colloquy ensued:

812 "By Mr. Struett: I would like to have them marked and produced, so I can have them as part of the record, your Honor.

By the Court: I don't see on what theory.

813 By Mr. Struett: All right.

By the Court: I might ask counsellor to take out his pocketbook.

By Mr. Struett: Now, if your Honor please, I would like to have the Government produce the Grand Jury testimony of the defendants Brandt and Kusper before the Grand Jury on or about the same date that Mr. Sobieraj appeared, and have it marked as a defendant's exhibit and get a ruling on its admissibility.

814 By the Court: What is your theory?

By Mr. Struett: I think this is all part of this theory, your Honor, that these men all went before this jury and denied this matter. They denied it to the agents. I think I am entitled to all of the evidence.

By the Court: You have not attempted to prove it. That is the trouble.

By Mr. Struett: It is in there part ways, Judge.

By the Court: No. Do you object to it?

By Mr. Manion: Yes, we do, your Honor.

By the Court: Objection sustained."

821-822 Thereafter, considerable colloquy ensued concerning the submission of the indictment and plea of guilty as to Sobieraj to the jury, the court ruling that, on motion of the defendant, the entire indictment could go to the jury and that the defendant would be permitted to argue the plea of guilty. The court likewise admitted Defendant's Exhibits 34 through 42, Marzec's original records kept during the process of receiving the commissions.

Thereafter, defendant offered Government's Exhibits 41 and 42, renumbered as Defendant's Exhibits 45 and 46, the statements prepared by the defendant. The Government's objection of incompetency, based on the fact that they were prepared subsequent to the events and payments recited therein was sustained and the following transpired:

823 "By Mr. Struett: Your Honor, he gave them to the United States Attorney.

By the Court: His testimony on his cross-examination showed he manufactured them after the event.

By Mr. Struett: Certainly he did.

By the Court: Objection sustained."

824 Thereafter, counsel for the defendant moved to strike the questions of the United States Attorney of the witness Marzec as to the questions asked and answers made by Marzec before the Grand Jury on March 11, 1955 from the record on the grounds that the defendant was denied the opportunity to put in the rest of the grand jury testimony. Thereupon the following occurred:

825 "By the Court: You were given the opportunity to
826 ask him about what he said before the Grand Jury, and counsel for the Government particularly called your attention to that fact.

Then later you offered the rest of the transcript, and the Court examined the whole transcript and found that what you were now offering bore no relation to the subject matter covered by the questions and answers by Government's counsel, and denied your offer, and adheres to that ruling.

By Mr. Struett: If your Honor please, if I may clear that up.

By the Court: You don't need to clear that up. That is clear.

* * * * *

826–830 Thereafter, the admissibility of defendant's exhibits 45 and 46 was reargued and the Court adhered to its original ruling. Thereafter, the government withdrew its objections to defendant's Exhibit 17, which was accordingly admitted. Then the court sustained a general objection to Defendant's Exhibits 19 and 20, the statements which Marzec delivered to the United States Attorney's office. Thereupon, counsel for the defendant stated that in the light of the ruling on this exhibit there was no use in bringing the jury back. He would make an offer of proof with Mr. Hauptman, his accountant.

831-832 JOSEPH T. MARZEC resumed the stand and testified as follows on his own behalf:

Redirect Examination.

Defendant's Exhibit 45 the check for $450.00 is in the black book as distinguished from the check for $450.00 which is not. At the left hand corner it bears the notation, "North Shore and Lakewood". The witness made that notation when he had the black book to examine it. It represents a building that a loan was made upon.

832-6 *Recross Examination.*

The black book the witness referred to is Government's Exhibit 33. The check, defendant's Exhibit 43 for identification, appears in the book. The amount shown in the black book is $450.00 and the amount shown in Defendant's Exhibit 43 is $450.00. The entry "North Shore and Lakewood" did not appear upon Defendant's Exhibit 43 until the witness placed it there the preceding Saturday, to distinguish it from the other $450.00 check. The other check, Defendant's Exhibit 31, was distinguishable from Defendant's Exhibit 43 by check stubs. You could not tell from the checks themselves.

DOROTHY E. SIPIORA, being first duly sworn, testified on behalf of the defendant:

836–841 *Direct Examination.*

The witness testified that she was subpoenaed by the government and was afterwards called and told not to come down by a Mr. Kabaker. She worked as secretary to Stanley T. Kusper at the Polish Roman Catholic Union for a period of six and one half years from May of 1948

until December 23, 1954. Her duties included the preparation of mortgage documents, closing statements, processing loans and similar activities. She knew what brokers made loans with the Union, among whom were Miller Sheldon, Banach, and Kazzor. (On objection of counsel for the Government, she was not permitted to testify as to whether she had conversation with these brokers as to their payment of commissions to Marzec.)

Defendant's Exhibit 22 was her signed statement comprising forty-five pages and dated December 29, 1954. It was prepared in attorney Rieger's office upon interrogation by Mr. Struett. She was interrogated from this statement in the United States Attorney's office before she went in to the Grand Jury, and believed she saw the statement on the desk when she was before the Grand Jury. On or about October 19, 1955, she was interrogated by Special Agent Worcester and gave him an affidavit (Defendant's Exhibit 51). Thereupon, Exhibits 22 and 51 were offered and counsel for the Government objected on the grounds that it was not clear for what purpose they were being offered. Thereafter the following colloquy occurred:

840-1 "By Mr. Struett: He (Worcester) testified in substance that he had examined the books of this man and could find no evidence that Kusper got these commissions.

By Mr. Manion: He did not say that at all, Mr. Struett.

By Mr. Struett: That is my version of it.

By Mr. Manion: We have the verbatim transcript.

By the Court: I don't see on what theory you are presenting these.

By Mr. Struett: It shows they had evidence that Kusper got the commissions. The girl gave evidence against Kusper.

By the Court: Objection sustained."

Cross Examination.

841–2 The witness testified that when Mr. Kabaker called her, he told her that he would advise her when she should appear. The witness knew that there was another defendant under indictment in this cause.

HERBERT M. HAUPTMAN, being first duly sworn, testified on behalf of the defendant:

843–56 *Direct Examination.*

The witness testified that he was an attorney for approximately 20 years and a Certified Public Accountant for approximately four years. He was employed by Marzec on October 23, 1953. He had a series of conferences starting on that day. He checked books, records and other information that he had pertaining to Marzec's known visible assets. He reviewed the transcript of information that Marzec submitted showing a list of loans made by the Union in regard to which Marzec became the recipient of certain monies. He and Marzec were preparing information to be presented to the government and to whatever governmental bodies might have been interested in the division of the monies which Marzec received and the fashion in which it was distributed. He had Marzec prepare a series of documents based on the records that he had, both original and supplemental, from which Hauptman prepared a statement of net worth, taking into consideration such known assets as were available, income tax returns for the years 1946 through 1952. He had been instructed by Messrs. Struett and Rieger to prepare such information and have it available.

On August 31, 1955, Rieger, Marzec and the witness went to the office of Assistant United States Attorney Reeb. Agents Freiberger and Worcester were also present. The

witness brought along all the information that he had pertaining to Marzec. He told them at that time that he had the net worth statements, checks, bank statements, and a series of statements prepared by Marzec under his instructions pertaining to Marzec's receipt of monies and their distribution. He told Reeb that Reeb was entitled to any of this information he desired. Reeb stated that they desired certain checks, but they did not need them all. Then they went through a series of checks covering a two year or longer period. Certain checks were extracted to be photostated. Reeb also took the analysis (Defendant's Exhibits 45 and 46) that was prepared by Marzec at Hauptman's direction, had photostatic copies made, and returned the original.

The witness had a discussion with those present as to how this was prepared and how it was related to a net worth statement. Then the following occurred:

"By Mr. Manion: I think I will object to this testifying to conversation. If Mr. Hauptman is attempting to lay a foundation for the admissibility of these documents, we have no objection to that, but it is improper for him to lay the foundation by what he said and what somebody else said to him in the office of the United States Attorney. I don't think the foundation of these documents can be laid in that fashion."

* * * * *

(Thereupon the jury was excused, and the following proceedings transpired.)

"By the Court: What do you expect to show from this?

By Mr. Struett: I expect to show this, Judge, that he told—

By the Court: That "he"—who?

By Mr. Struett: Mr. Hauptman—that Mr. Hauptman went over there with his information to make it available to them. He told them how he had prepared these docu-

ments, Defendant's Exhibits 45 and 46, that in addition thereto, they were in substance supported by a net worth statement which he had prepared, which he had, and whatever documents they wanted, the Government could have, and then they asked for these and the checks and that is the last you heard from him. That, I think is perfectly competent evidence.

850 By Mr. Manion: We don't think it is material.

By the Court: For what?

By Mr. Struett: To prove the admissibility of these documents, your Honor.

851 By the Court: I don't see it.

By Mr. Struett: I certainly do. I mean, they were called to the attention of the United States Attorney.

By the Court: He might call the attention of the United States Attorney to anything, it doesn't make it admissible in evidence in a lawsuit. Here are some papers the gentleman prepared. We don't know what he prepared. He said he prepared them from records. We don't know what records he prepared a net worth statement from. We don't know where he got his basis to start on his net worth.

By Mr. Struett: I will go into that if they want to. I would just as soon do that.

By the Court: I don't see that you have started it. Better go ahead, examine this witness outside of the jury until I see where you get. Make your objections right along."

* * * * *

The witness prepared a net worth statement which he had with him. He had it since approximately the latter part of 1953 or the early part of 1954. He was asked to prepare it by Mr. Rieger and Mr. Struett and had access to Marzec's records. His records included the property records, bank records, bank statements, income tax returns for the years 1946 through 1952 and some prior years. In

addition, the witness had information from Mr. Marzec directly. The witness attempted to reconcile Government's Exhibits 41 and 42 with the net worth statement which the witness had prepared. The witness then described the manner in which he attempted to reconcile the statements and concluded that he "really tried to make certain that the figures that Mr. Marzec had prepared here could be substantiated by way of a net worth statement." He then took his documents to the U. S. Attorney's office as he had indicated.

856–879 *Cross Examination.*

The witness stated that the records from which he prepared the net worth statement were not derived solely from Mr. Marzec. The majority of the information came from documentary evidence such as real estate files, bank statements and other data which the witness had with him. The witness stated that he was able to substantiate Mr. Marzec's representation as to total retained income as shown in Governments Exhibits 41 and 42. It was impossible to allocate it for any given year. (After detailed inquiry as to the corrected operating statement for commission income for the years 1949 and 1950, counsel for the government stated he had no objection to the witnesses testimony as to what the net taxable income was but objected to the foundation for the documents produced by the witness.)

Under questioning by the court, the witness described the method by which he made up the net worth statement. He took the tax returns to arrive at what properties were recorded or reported. In addition to that he took the property files turned over by Mr. Marzec and traced them from the purchase date down through the disposition date. He plotted each property from the beginning of the period, showing its original cost, the length of time it was retained

and the sales price if it was disposed of. The period happened to begin with 1946. The witness assumed that the defendant was worth approximately $8,000.00 at the start of the period on the basis of the properties that he held at that time, from property records and income taxes. With respect to property which the defendant did not have, stated that he knew the defendant did not have it because there was no information or evidence in any of the tax returns or in the defendant's statements to indicate that the defendant had the property. Thereupon, the court further examined the witness who stated that to get a basis for a net worth statement it was necessary to rely on either Marzec's statements or his tax returns. However, even if there were unknown assets at the beginning of the period, it would be immaterial since if not included it would have no effect on the net worth statement. The witness checked bank statements and checks to see that there were no large items of expenditure during the period. The witness stated that the significance which he attached to a net worth statement was that if the combination of the net worth statement and the earnings statement tie in together there is an assumption that the net worth statement is correct.

(Thereafter a colloquy occurred between counsel and the court concerning the admissibility of this document during which the Government objected on the ground that it was self serving, once removed, since it was predicated upon information furnished by the taxpayer.)

In response to further cross-examination by government counsel, the witness stated that the net worth of an individual is going to be directly derived from information furnished by the taxpayer. You substantiate that with documents showing costs of property, sales price of property, and other information of that kind. There is no other basis. The property records which the witness con-

sidered showed that Mr. Marzec held properties in combined interest with others in the Cosmopolitan National Bank and other trust companies. The witness did not inquire from representatives of those companies as to whether he had been advised of all of the land trusts by Mr. Marzec. He did not check with those to which Mr. Marzec did not direct him. He questioned Marzec as to his living expenses and tried to build up what his living expenses would be from the witnesses viewpoint. He did not check the stores where the defendant did business, where he spent vacations and things of that sort because the witness believed he gave enough leeway there. The witness did not talk to any possible donees of gifts. The witness testified that he was using net worth as corallary information. The witness stated that substantially what he was saying was that the net worth statement shows that for two years. 1949 and 1950, Marzec received approximately the sums represented as retained by him in Government's Exhibits 41 and 42. He was unable to tell what Marzec did with the balance of the commission paid to him during those two years.

Thereupon an objection to that line of testimony and to Defendant's Exhibits 45 and 46 was sustained.

ROBERT KLENHA, being first duly sworn, testified on behalf of the government in rebuttal:

Direct Examination.

881-6 The witness had been a special agent in the Intelligence Division of the Internal Revenue Service since 1945. He was present in a conference on November 8, 1954 in the office of the United States Attorney with Messrs. Struett, Rieger, Marzec, Freiberger, Wolfe and Reeb. He had met Mr. Struett early in the morning with his client and Mr. Rieger in the reception room of the United States Attorney's office, and discovered that they were there for

the purpose of having a conference with Mr. Tobin. The latter being ill, Mr. Reeb was assigned to sit in on the conference and the witness arranged for representatives of the Bureau to be present.

Defendant's Exhibits 19 and 20 were produced at the conference, but they were not all the documents. Others included Defendant's Exhibits 34 to 42. Mr. Struett offered these things with the representation that these documents would establish that Marzec had paid out a considerable portion of the funds that he was alleged to have received from others. This witness was particularly concerned about Defendant's Exhibits 34 to 42, inclusive, and the implications of the tender caused him to tell Messrs. Struett and Marzec that he could not accept any of these things on behalf of the Revenue Service with any conditions or any strings attached to it, and that he did not accept them as absolving Marzec of any responsibility or liability. The witness offered to accept them for what they were worth, but again with the exception that he would not be bound in any manner by way of immunity or extending a reward to Marzec. He repeated himself a number of times, emphasizing that he could not accept these documents with any strings attached. Mr. Struett kept tendering them to him and the witness kept handing them back. It was cause for comment later on, the way "we handed those instruments back and forth between Mr. Struett and myself.

887-889 *Cross-Examination.*

The witness stated that it was possible that there were a lot of exhibits there besides the particular documents mentioned on direct examination, and basically at that time the witness did not want to take them. This was not his case, and the statements were given to Mr. Reeb rather than to him.

FRANK WILLIAM REEB, being first duly sworn, testified on behalf of the Government in rebuttal:

889-91 *Direct Examination.*

The witness testified that he was an attorney associated with the Chicago firm of Bell, Boyd, Marshall and Lloyd. Prior to that time he had been an assistant United States Attorney. On November 8, 1954 he received Defendant's Exhibits 19 and 20 in the course of his duties as an assistant United States Attorney from Mr. Struett or Mr. Rieger at a conference in the United States Attorney's office. Mr. Marzec, Mr. Klenha, Mr. Wolfe, and Mr. Freiberger were also present. At the time he received these documents, he said, "We are willing to take the statements, but that in connection with taking them I would make only one promise, and that was that I would read them. And I stated at that conference, that, at the conclusion of the conference, that I made no promise other than that it would be read." (sic.)

Cross-Examination.

891–892 The witness was not permitted to answer a question as to whether or not if it had not been for those documents and the information given him by the defendant he would not have had a case against the other two defendants.

Which constituted all of the evidence heard in the above-captioned cause.

* * * * *

894 By Mr. Struett: My first motion, your Honor, is to renew my motion for withdrawal of a juror and declaring a mistrial, which was filed on February 11, 1957.

I would like to renew that motion.

By the Court: Do you wish to say anything further about it?

By Mr. Struett: I have argued it before. I think, your Honor, that I am going to depart from it for a couple of minutes here, and I can come back to it, if I want to.

Now my second motion is to strike the testimony of Mr. Sobieraj in that it was false and that it was not adequate, that adequate opportunity wasn't given to cross-examine.

Now my third motion is to strike from the record Defendant's Exhibit 33, which is the black book.

My fourth motion—

By the Court: Just a minute. Your first motion is to withdraw a juror.

The second is to what?

895 By Mr. Struett: To strike the testimony of Mr. Sobieraj in that it was false and it has no probative value in the light of what I am going to say now.

By the Court: Yes.

By Mr. Struett: The third motion is to strike from the record the little black book that he produced, Government's Exhibit 33, is that right?

By Mr. Manion: That is correct.

By Mr. Struett: My fourth motion is to strike the testimony of Mr. Worcester,—is that his name?

By Mr. Manion: Worcester.

By Mr. Struett: Worcester, on the grounds that it was arbitrary, capricious, senseless, irresponsible and indefensible in the light of the facts in this case.

My motion then—

By the Court: Well, wait a minute. Mr. Worcester?

By Mr. Struett: Mr. Worcester, that was the man that prepared the summaries and gave the technical evi-

896 dence about the allowance and disallowance to Marzec for these payments.

By Mr. Manion: That is correct, your Honor. Mr. Worcester testified as to the summaries prepared by him from the evidence in the case and also testified as to unreported deductions as established therefrom.

By Mr. Struett: Then my motion is to strike all of the exhibits of said Worcester on the grounds they are based upon his testimony as aforesaid for the reason that at the time of their introduction in evidence ample opportunity was not given for cross-examination and that these exhibits themselves were speculative, arbitrary, capricious; and for the further reason that there was not in the record sufficient evidence to justify some of his computations and that other evidence in the record showed that his other computations were false.

I have got to have my motion to produce, and then
897 I make a motion for a directed verdict.

Now, if your Honor please, your Honor was kind enough to hear me on this book of Mr. Sobieraj the other day. True, he said it was a partnership book. But if you will notice, it ends 1952 when his mother-in-law dies.

Now that is in the record now, she died early in 1952.

In addition thereto, there is in the record evidence that it does not contain all the commissions paid by Mr. Marzec to Mr. Sobieraj.

898 And as I fully developed to you yesterday, while I may have said it is a partnership, the very entries indicate that she carried out to the right hand side only her share, and it is her personal book.

Now, insofar as that book, my position is that under this record, that book cannot remain here under any circumstances, with the greater deference to this court, and in turn, Mr. Worcester's testimony for the refusal to allow Mr. Marzec other than the amount admitted by Mr. Sobieraj, he bases it on his black book.

I certainly testified to that one place because I saw it the other night, and it doesn't furnish a basis for any of his administrative action.

Now, when you get to his other testimony, he says—and pardon me a minute here—he says, and I am going to get that testimony now.

By Mr. Manion: It begins at page 486.

899 By Mr. Struett: All right. Basically, I think I can say to your Honor that he prepared—have you got a copy of it?

They are in evidence, just so I can show what I mean. I may put this backward, and I may put it forward, and I don't want to do it deliberately.

Mr. Manion: Here are the documents in evidence.

By Mr. Struett: All right. What he first did was to compute the total amount of the commissions, isn't that right, for 1949 and 1950?

By Mr. Manion: As testified to by the witness and shown by the exhibits.

By Mr. Struett: And there is no question about that, and that gives certain credits against that. For instance, he shows Stanley T. Kusper, $2,175.00 giving Marzec no credit for any cash at all.

He gives Sobieraj $7,848.33, which is the amount shown in the black book.

Then he gives Frank Brandt—and I think the rec-
900 ord shows that Brandt's figures and our figures are approximately correct. In other words, you couldn't verify it any other way, and they are naturally the same, so we don't bother about Brandt.

By Mr. Manion: Well, let's have the record clear, though, Mr. Struett, as to Bruno Sobieraj.

Mr. Worcester also included in his total figures unrecorded checks, which are included in the checks identified by Mr. Marzec.

By Mr. Struett: There is no question about that. Those unidentified checks were for the purpose of showing—

By Mr. Manion: That the record wasn't complete.

By Mr. Struett: That the black book wasn't complete.

By Mr. Manion: The exhibit is here.

By Mr. Struett: I will take your word for it.

"Mr. Worcester, have you been able to determine
901 or verify any deductions or expenses or commissions paid by the defendant, Joseph Marzec, for the calendar years 1949 and 1950 in the course of your investigation?

"A. Yes, I have.

"Q. To whom and to what extent, if any, sir?

"A. With respect to commissions paid to Bruno Sobieraj, I took his book, made a list of monies that he said he received from Mr. Marzec. There were also checks that he received. Some of the receipts by Bruno Sobieraj were cash, some were in the form of checks, and I listed those."

Then he goes and tells about Brandt—as to Kusper:

"Now, Mr. Worcester, did you make efforts to determine whether or not the Defendant, Joseph Marzec, is entitled to deductions for commissions paid to Stanley Kusper in excess of the deduction for commissions paid as stated in the tax returns for the years 1949 and 1950,
902 being Government's Exhibits 1 and 2 in evidence?

"A. I examined the books and records of Mr. Kusper for the years 1949 and 1950. His records reflected the checks issued by Mr. Marzec to Mr. Kusper and Mr. Repsuk. I did not find any additional income due Mr. Kusper from Mr. Marzec.

"Q. In other words, you did not find additional deductions unreported or deductions to which Mr. Marzec would be entitled, is that correct?

"A. That is correct."

Now here is my thought on this, your Honor. Maybe I am wrong on it. Maybe I am not.

I think that where an expert, or we will call him an agent, gets into a case, he has got to recognize the evidence of the case rather than to make an arbitrary determination.

903 Basically here, your Honor, he states he went to the books of Kusper, and he found these books.

Obviously he didn't find the cash. There is evidence in this record that Marzec did pay him cash, and when he prepared computations, he must give credit to it. He just can't ignore it.

In other words, my whole theory of this case, your Honor, and we have had a little argument about it, is that when they indict this man Kusper, when they do these things, they concede that there is in effect additional income by way of these cash proceeds or cash commissions.

That is just my view of it, and I say to you that therefore his whole computations are capricious, as they use the term in tax law, where you say an assessment is arbitary and capricious.

He just can't come in here and say this man had no—well, they talk about the Bender and the Horwitz case.

904 I went through the cases very fully before I cleared it, your Honor, the Horwitz case, and that is a different kind of case entirely.

They have evidence here—maybe it is not the best. I am not saying it is the best, your Honor, but surely action of a Grand Jury, by the United States Attorney indicting Kusper here, would preclude the United States Attorney in this case from coming in here and saying that Kusper got none of this cash.

It just doesn't make sense to me. I am honest with you and you get into the question of proof, your Honor, and you prove that Kusper got these commissions.

Supposing we were trying Kusper? We would have to have the direct evidence of Marzec.

Now, Marzec's word alone is no good. Let's say that is basic. Under our law you can use the accomplice, as I understand it, in our Federal Court, but basically to make a case, you have to have corroborative evidence.

They have had that corroborative evidence in their
905 files for a long period of time. They come in here and
put me to a defense on the theory I have to prove really the case against Kusper.

Now, if Worcester's figures fall, Mr. Ruggaber's figures fall, because he is the expert who testified from Worcester's figures.

I assume that is correct, isn't it?

By Mr. Manion: It is correct in part, but Mr. Ruggaber also testified he was present in the court room during the course of the trial, and he did take the evidence into consideration.

By Mr. Struett: Basically, his figures, as far as the figures that I am talking about, I looked at it last night, and they do fit into Worcester's testimony.

By Mr. Manion: You are talking about deductions?

By Mr. Struett: That is right.

By Mr. Manion: There is no question about that, as to Kusper's anyhow, and as to Mr. Brandt.

By Mr. Struett: We refer back to my motion to
906 withdraw a juror. I think I substantiated a great deal
of that motion relative to Sobieraj's testimony when I offered in evidence the checks, and I offered in—and the evidence shows when this mother died, the evidence shows it stops right there. That is very damaging evidence to my client, your Honor.

Your Honor says "he testified it is a partnership book." True. Ordinarily, your Honor, it is right.

By the Court: It is not surprising to you that a partnership ends when one of the partners dies, is it?

By Mr. Struett: No, it isn't, your Honor. That is true, perfectly true, but I mean you look at the book—you say—well, it isn't a question of its competency, but it is a question of its materiality.

However, your Honor, we get back into my predicament

on these Government's Exhibits 46 and 45, which are these documents, these carry-overs of the income, and I think
907 that is more a question of its weight rather than its competency, but I don't think that Sobieraj book should have gone in evidence, and I make these motions.

908 There is one other proposition I have here, Judge, and I want to argue it to you. I want to argue it very seriously and very, very briefly.

There isn't any question in this case, your Honor, that this man omitted income. You just can't escape it. I didn't claim he didn't.

There isn't any question in this case that this man was responsible for the making of the case against these other people. I don't think the Government will deny it. They can't deny it.

In addition to that, your Honor, this man had no representation.

Now, whether it is his lawyer, whether they hired one for him, you and I may disagree on, but the testimony of the agents is practically conclusive that all these lawyers did was say, "He won't tell us nothing. He won't cooperate. We would like to get out of the case." And the other lawyer says over at Mr. King's office, "If you signed those
909. checks, you ought to go to the penitentiary."

That is pretty rough treatment for any American citizen to have representation like that, and he has done here what a citizen—maybe he was wrong in the first place—should have done.

I think he has given the Government something, and I think he is entitled to the benefit of it.

As far as I am concerned, in my judgment, and I have been wrong so many times that it isn't even funny, that this man put in this situation this over-all fact, that this prosecution is just so repulsive to doing a proper admini-

stration of justice it can't stand, and I say it to you in all sincerity.

Let's take what they said this morning, that Mr. Reeb said that it would be the death warrant of my man. I am not exactly giving a death warrant to a client, but let's take them at their face value.

They used him. They got the benefit of him, and now they want to prosecute him.

910 I don't think our Government is run that way. Maybe it is, but I have never heard it before, and I think it is a question that I could give to you in the Morgan case where they said when these administrative officers have the great powers they have, that they should conduct themselves according to the basic premises of fair play.

You heard the testimony. They talked to us about specific questions he is going to give. The questions he gave, Judge, as you can see from that transcript, were to pin the amount of money to these other people.

He gave them their case, and he gave it to them honestly and conscientiously.

It just doesn't seem to me that it is the kind of case that the courts should have.

Now that he is guilty, there isn't any question about it in a sense. She certainly cheated under his taxes. They had him under wraps, and they held him under wraps,

911 and all the time they held him under wraps, Judge, they were going around and knifing him.

912 Mr. Osheroff testified that Wilson called him up the day after he had examined the books. Wilson testified that he was hired the latter part of 1950.

Mr. Marzec testified, and apparently this man had a lawyer before he ever knew an accountant. You can take that whole situation and follow it through, and you will see that they gave him no representation.

There is another thing in this case. There wasn't an

investigation as we know it. Your Honor tried the Johnson case, the Paschen case, and in my conception of investigation, that is that you go out and get the true story of this situation.

These gentlemen, with due deference to them, they picked up the commissions—they unquestionably had it—and as Mr. Wolfe said when he had that conference on April the 11th, he says, "We were ready to send it forward to Justice."

All they had to do to the man was to say, "Get yourself a lawyer. Here is what we have, and we are going
913 to indict you alone," and they would have had this whole story.

It is a funny case. It is an interesting case, and I feel very strongly on it, Judge, and I make these motions. You may rush me a little bit, but I have done the best I could, but I would like to make these motions, and I make them in good faith, and I think they are sound basically.

I don't think an agent in a case has the right to come in here and disallow anything where he knows otherwise, and that is the difference, as I look at it, from the Horwitz and the Bender cases and those cases.

The job of the Government is to get at the facts, not to load people with taxes, and I can't say any more, Judge, now, and I thank you for your time.

By the Court: On these motions, the questions presented by these motions have all been presented and considered before, except the motion for a directed verdict.

They were thoroughly considered at the time they
914 were presented, and I have considered what you have said today, and I don't see any reason for changing my view about the matter, and accordingly the motions will be each and all denied.

* * * * *

By the Court: Now, what is this about putting the case over until tomorrow? This case will never end.

By Mr. Struett: I appreciate that. I have been over your instructions, they are fair. There isn't any question about it. I have no objection to them, they are all proper, so forth and so on.

Now the Government submitted certain instructions here.

By the Court: February 13th.

By Mr. Struett: Is this February 13th?

By the Court: This is the 13th.

By Mr. Struett: Some of them are included in your instructions. I have gone through it hurriedly.

By Mr. Manion: We will withdraw Government's tendered instruction No. 1, your Honor, at this time.

By Mr. Struett: Let's try to get these in order here. I will give the Court my thoughts on it.

You withdraw No. 1?

By Mr. Manion: Yes.

By Mr. Struett: No. 2 is what?

(Whereupon Mr. Struett read Instruction No. 2.)

By Mr. Struett: I don't think that is applicable in this case. That is the Hornstein case, Judge. I think the
920 question in this case is primarily what the evidence shows, and of course I don't like that in there.

Your Honor's instructions are stock instructions, I have no objection, of course. However, it says:

"You should properly consider any—"

By the Court: No. 2 looks to me all right. I don't like this Government's Instruction No. 3. I want you to take that off.

By Mr. Struett: I don't either.

By the Court: Where does your rule say you can put the number? The rule tells you how to do it. What does the rule say (addressing the Clerk)?

You have withdrawn No. 1. I hand it back to you, Mr. Manion.

By Mr. Manion: I have withdrawn No. 1, yes, your Honor.

By the Court: No. 2 I will give. You still insist on it in spite of Mr. Struett's objection?

By Mr. Manion: Yes.

By the Court: I will give that.

921 What does the rule say about that (addressing the Clerk)?

By Mr. Struett: I want to make a specific objection to No. 2.

By the Court: Yes.

By Mr. Struett: (Reading Instruction No. 2.) Now I take a different view of this case. I take the view the Government here in this case is required to barely and forthrightly present the true picture as to this man's tax liability by way of deductions or otherwise, and the instruction that they do not have to do so is not proper under the evidence in this case.

By the Court: Well, I don't think so. I think this is proper. If the Government were sure, why, certainly, they ought to tell us so. If they are not sure—if they are sure, I would be surprised.

What does the rule say about it (addressing the Clerk)?

By the Clerk: (Reading): "The requested instruction on behalf of a plaintiff shall be numbered consecutively from No. 1 up in the lower lefthand corner."

By the Court: Lower lefthand corner, just put
922 a "2" down here on the Government's instructions or any other, just a small "2".

Now what about No. 3?

923 By Mr. Struett: I tore that up, your Honor. I thought you said you didn't like it. I just tore it up.

By the Court: I was just talking about the numbers down there.

By Mr. Struett: I see. I beg your pardon.

By the Court: (Reading Instruction No. 3.)

What do you say about that?

By Mr. Struett: I think, your Honor, it is that the amended return may be evidence also of a man's good intent just as much as it is the other. I think the patent point of justice to that one matter, as I understand it, this substantially represents the law. I think that is true, isn't it, Mr. Manion? I think this case is on that.

By Mr. Manion: That is correct, Mr. Struett.

Mr. Struett: I am dealing here with the case we have here.

If your Honor thinks it should be given, I don't have too much objection to it.

By the Court: I don't think it should be given. You will have to change that. Just put a small "3" down there at the bottom.

924 By Mr. Struett: What is your No. 4?

By the Court: (Reading of Government's Instruction No. 4.)

What about that?

By Mr. Struett: I don't think that is right, your Honor.

By the Court: What is wrong with it?

By Mr. Struett: I mean, I think what it does here, your Honor, is it pinpoints—

By the Court: Well, after all, we have talked just about the solar system here. We ought to bring the jury down to earth as to what the question is.

I think I will give 4.

Now No. 5.

By Mr. Struett: Well, I object to that on this ground, your Honor:

(Reading of Government's Instruction No. 5.)

Now that is pinpointing particular evidence and I don't think that is proper, your Honor. If you are going to dis-

cuss the evidence, I don't think you should pinpoint in your instructions particular evidence.

My main objection to that is that last particularly,
925 "you may consider—".

Other than that, that is certainly the law. I mean to settle on particular things to point out, I don't think that is proper.

By the Court: What do you say about that, Mr. Manion?

By Mr. Manion: Well, this instruction has been given and approved before, your Honor, in the Indian Trailer case.

By the Court: What?

By Mr. Manion: It was given in the Indian Trailer cases by Judge Hoffman, it was given by Judge Campbell in the Irving case.

I was looking for the citation of authority for this particular instruction. I have not been able to put my hand on it.

By Mr. Struett: You have got authority for every instruction, but it depends upon what your facts are.

Now that is my objection to it.

By Mr. Manion: Well, in view of Mr. Struett's objection, we will withdraw instruction No. 5, your Honor.

926 By the Court: Very well. Hand that to Mr. Manion. (Addressing clerk.) Now No. 6.

By Mr. Struett: My objection to that is it is pretty much the same thing, your Honor.

(Reading of Instruction No. 6 by Mr. Struett.)

By the Court: Well, I will refuse that. It doesn't do you any good—but I don't think I want to give it.

By Mr. Manion: That instruction is the Spies case instruction, Spies *vs.* United States 317,492.

By the Court: Well, I'm not going to give it.

The next one is this instruction No. 7.

By Mr. Struett: What is that, Mr. Manion?

By Mr. Manion: That is the instruction with regard to the witness Sobieraj.

By Mr. Struett: I don't care one way or the other on that, your Honor. I have no objection to it. Let's see.

927 (Reading of Instruction No. 7 by Mr. Struett.)

By Mr. Struett: Yet he may testify truthfully and he may testify falsely, too. I mean, I don't like these lefthanded one-way constructions.

By Mr. Manion: We will withdraw the instruction.

By Mr. Struett: All right, your Honor.

By Mr. Manion: It was prepared for your benefit, Mr. Struett.

By the Court: What did I say about No. 6? I would refuse that, didn't I?

By Mr. Manion: You said you would refuse that.

By Mr. Struett: Yes.

By the Court: Now No. 7. Hand it back (Addressing the clerk.)

By Mr. Manion: No. 7 was just withdrawn, your Honor.

By the Court: I am handing them back, No. 7.

By the Court: No. 8.

By Mr. Struett: (Reading Government's Instruction No. 8.)

928 We are right back where we were on that, your Honor. He testified he made an investigation outside of the record, and that isn't in the record. He has investigated, and that is one of my objections to his testimony, and then they say:

(Reading from instruction No. 8.)

Let me ask you something. I don't think this is the law, this second part. I think if they prepared summaries from the evidence, aren't those evidence in the case? That has always been my impression, Judge.

Supposing they prepare summaries from the evidence in the case, are those summaries evidence itself?

By Mr. Manion: No, they are not.

By Mr. Struett: Then I am learning something new. I always thought they were, Judge. I mean if you have an expert in here, he can prepare a summary from evidence in the case, and when you offer those summaries, aren't those evidence, or are they merely for the convenience?

If you are right on that—if that is the law, I have no objection to that.

By Mr. Manion: Do you want them to be considered
929 as evidence, Mr. Struett?

By Mr. Struett: No, I don't want them to be. I always thought they were. I am honest with you.

By the Court: I think you should put in "otherwise" in there.

By Mr. Struett: Where does he want to put it in?

By the Court: After "evidence" in the last line.

By Mr. Struett: As to the second part of this instruction with the word "otherwise" in it, I have no objection to it. I don't like that first part.

By the Court: What were the investigations?

By Mr. Manion: Agent Worcester testified, your Honor, that he examined Government's Exhibit 33, being the cash book of the Stanczewski partnership, that he interrogated Frank Brandt and investigated the records of Stanley Kusper and interrogated Stanley Kusper.

He testified that he had prepared the two schedules, 33-A and 33-B from 33 showing the total cash receipts admitted to by the co-defendant Sobieraj; that the defendant Brandt had admitted receiving the sum of $45,000.00 over a six or seven year period from the defendant Marzec but
930 he could not specify what the sums received in the two given calendar years were, so that on the basis of

the representations made to the Government by Marzec that he had received these certain stated figures or had paid the certain stated figures to Brandt in those two years, he was credited with those two figures for deduction purposes.

He testified as to the co-defendant Kusper, that Kusper's records coincided and matched the records of the defendant as to cash receipts by him from the defendant Marzec.

By Mr. Struett: And he denied—

By Mr. Manion: He denied receipt of any cash, and Agent Worcester was not able to find any other evidence of cash payments to Kusper or cash receipts by Kusper.

For that reason, he was not crediting the defendant Marzec with any funds paid to Kusper during the tax years other than is shown in the defendant's own tax returns.

By the Court: I am inclined to give this if the word "otherwise" is inserted after the word "evidence."

By Mr. Struett: It gives to the jury the results
931 of the investigation, which is not in evidence, other than the fact that an investigation be made, and I think it is erroneous, and I want to object to that instruction.

932 By Mr. Manion: Mr. Struett, you did not object to Mr. Worcester's testimony at the time he gave it.

By Mr. Struett: The record will have to show what I objected to. I appreciate that, Mr. Manion. Whether I did or didn't, you and I may disagree on that.

By the Court: What about No. 9?

By Mr. Struett: I don't think there is any question about that, is there?

By the Court: I will give No. 9.

By Mr. Struett: The instruction I have tendered is the instruction that was turned down, and the Supreme Court of the United States held it was properly turned down.

As I understand it, they have taken the Costello case

where they are going to pass on this question which might affect the denial of it.

By Mr. Manion: May I see a copy of that instruction?

By Mr. Struett: The Judge has all the copies. I have not had a chance to check that case for a long time.

933 By the Court: Well, when this indictment was returned, what year was it?

By Mr. Struett: 1955, Judge.

By Mr. Manion: 1955, your Honor.

By the Court: The Code of 1954 had become the law.

By Mr. Struett: I appreciate that, but I think, your Honor, it is my understanding—maybe I am wrong on it as I have not checked it, and I have not had a chance to check it, but I think this indictment is under the old Code.

By Mr. Manion: That is correct, the indictment is under the 1939 Internal Revenue Code.

By Mr. Struett: As I remember the case, they pointed out in the case there has been this change, but still this indictment is drawn under the old Code and I think that is the law, isn't it, that unless the statute specifically provides, then it is under the old Act?

By Mr. Manion: It is the Government's position, your Honor, that the 1939 Code would apply.

By the Court: The 1939 Code applies to the viola-
934 tion, but at the time of the indictment returned, the 1954 Code has modified that other statute.

By Mr. Struett: That is correct, your Honor.

By Mr. Manion: Yes.

By the Court: Where is that indictment? Well, it was refused, and it is not a question for the jury, anyhow, so I will mark this refused for you.

By Mr. Struett: There is only one other matter I wanted to call to your Honor's attention. I would like to have an instruction given here by the Court. It is unfair to come in and ask for something like this at this time, and I

should have had it—but consistent with the utterances of our Court of Appeals in the Phillips case as to this matter, if he had adequate counsel—

By the Court: You know that if you want to submit something to the Court, you ought to submit it. I don't want you to talk about—

By Mr. Struett: I know you don't. That is why I suggested we argue the case today, and I will have it in here tomorrow morning.

935 By the Court: What do you say?

By Mr. Manion: That is a matter entirely subject to the Court's discretion.

By Mr. Struett: I would like to argue it today and then will go back to the office and prepare the instruction after the argument.

By Mr. Manion: If the case is going to be continued for submission of further instructions by Mr. Struett, we would suggest the argument be held in abeyance. We would prefer to have the argument precede the instructions.

By the Court: Yes, that should be so. I don't think I will put this case over.

After your argument, I might put it over until tomorrow morning to instruct them, but I think the instructions should be in before you argue.

By Mr. Struett: My thoughts in mind now, your Honor, are only on that basic principle in the Phillips case about his intent and what advice he had, and there shouldn't be over two or three of them, but I think they are rather important in the light of the utterances of our Court of Appeals.

936 By the Court: I am not going to put this over to tomorrow morning for anything except instructions.

By Mr. Struett: I will argue it now. I am ready to argue it, as far as that is concerned.

By the Court: And I would prefer to instruct today.

937 By Mr. Manion: Mr. Struett, is the instruction you want to tender, an instruction as to his right or as to the advice of counsel?

By Mr. Struett: The advice of counsel and his relationship with his people. I think that is important in this case, very important; I mean what his position was in this joint venture—and I think he is entitled to an instruction on it.

By the Court: We adjourned here early yesterday afternoon, and we gave you last Thursday. You should have gotten this case ready for trial.

By Mr. Struett: I am merely stating my situation, your Honor. I can't do any more. I was working until 1:00 o'clock on my closing argument, and I went right home and started on it.

By Mr. Manion: The instruction which Mr. Struett would propose to give as to the advice of counsel, as we understand the law, would not be applicable in this case in any event, because such instruction is pertinent as to his intent at the time of filing or prior to the time of filing of the tax returns. Such evidence as has appeared in the record, if any, goes to the advice of counsel received substantially after the filing of the tax returns.

938 By Mr. Struett: Well, you asked this man whether or not he denied it right through. He was represented by counsel, and he said his counsel told him that is what he should do, that they would settle this case.

I think this man is entitled to that instruction. If he has any defense here, your Honor, it has to be based upon, in part, that.

By the Court: I told you last night, Mr. Struett, if you want to make any suggestions, to have your suggestions in writing this morning.

By Mr. Struett: I know you did, your Honor. I know that.

By the Court: And you request after your arguments are in that the case might go to tomorrow morning for instructions, and I might consider that.

By Mr. Struett: That is what I make.

By the Court: Now, then, you are just reserving in your mind that you are going to hand me some more instructions tomorrow morning.

By Mr. Struett: I will have them here tomorrow morning.

By the Court: That I will not let you do after the case is argued.

* * * * *

943 And Thereupon the Court Charged the Jury, as Follows:

By the Court: Ladies and Gentlemen of the Jury:

It is the duty of the court to deliver to you instructions for your guidance in the consideration of the evidence and in your deliberations upon this case.

The instructions which the court will give you, in so far as they pertain to the principles of law applicable to this case, must be accepted by you as a binding control and guide in your consideration of the evidence and in your deliberations.

The responsibility rests upon you to determine the facts of this case, under the law as the court may give it to you, uninfluenced by any expression of opinion that the court has made or may hereafter make upon matters of fact. The court has not intended at any time during the trial of this case, and does not intend at any time, to express any opinion on any matter of fact, and if the court has expressed or does express any opinion on any matter of fact you are at liberty to disregard such opinion, and it is your duty to disregard it, if it is different from
944 your own opinion.

This is a criminal case, and the law in such cases is that a defendant comes into court presumed to be innocent, and that presumption protects him until such time, if such time shall come, when the jury shall believe from the evidence in the case, beyond a reasonable doubt, that the defendant is guilty as charged in the indictment or some count thereof.

The guilt of an accused is not to be inferred because the facts proven are consistent with his guilt, but, on the contrary, before there can be a verdict of guilty you must believe from all the evidence, and beyond a reasonable doubt, that the facts proven are inconsistent with his innocence. If two conclusions can reasonably be drawn from the evidence, one of innocence and one of guilt, you must adopt the former.

The defendant on trial has pleaded not guilty. This puts the burden of proving the charges in the indictment upon the Government, and you cannot find the defendant guilty unless, from all the evidence you believe him guilty of the offenses charged in this indictment beyond a
945 reasonable doubt.

A reasonable doubt is what the term implies,—a doubt founded on reason. It does not mean every conceivable kind of doubt. It does not mean a doubt that may be purely imaginary or fanciful, or one that is merely captious or speculative. It means, simply, an honest doubt that appeals to reason and is founded upon reason. If, after considering all the evidence in the case, you have such a doubt in your mind as would cause you, or any other reasonably prudent person, to pause or hesitate before acting in a grave transaction of your own life, then you have such a doubt as the law contemplates as a reasonable doubt.

You are the sole judges of the credibility and the weight which is to be given to the testimony of the witnesses who

have testified upon this trial. In weighing the testimony of each witness you should carefully scrutinize the same; consider all the circumstances under which the witness testifies; his demeanor on the stand, the relation which
he bears to the Government or the defendant; the
946 manner in which he might be affected by the verdict;
the extent to which he is corroborated or contradicted by other credible evidence; and, in short, any circumstances that tend to throw light upon his credibility. And, applying these tests which I have just stated, it is for you to determine the weight which is to be given to the testimony of each witness.

Your verdict in this case must be reached from a consideration of all the evidence in the case, but if any evidence was admitted and was later stricken out, you must wholly disregard such evidence as was stricken out.

During the trial of a lawsuit it often becomes the duty of counsel for the parties to object to questions, or to evidence, and I instruct you that you shall not take into consideration against such parties either such objections or the number of them, nor permit yourselves to be in any way influenced by such objections against the parties.

The fact that an indictment has been returned is not evidence; nor is the indictment evidence; and neither the
indictment nor the return thereof should be consid-
947 ered by you as evidence in determining the guilt of
the defendant. The indictment is not to be treated by you as raising any kind of presumption or creating any kind of prejudice against the defendant. The indictment is simply the form or manner prescribed by law for preferring a charge against an individual, and must be regarded in that light, and in no other light.

The defendant has testified on the witness stand. You have heard his testimony. The fact that he is the defendant does not mean that he cannot tell the truth. You should

weigh his testimony by the same rules that you would weigh the testimony of any other witness. But you should keep in mind that he is the defendant in the case and, of course, has a vital interest in the outcome of this trial.

There are two kinds of evidence—direct and circumstantial. Direct evidence is that sort of evidence by which a fact is proved directly and without inference from other facts, and is usually given by witnesses who saw, heard or otherwise observed some particular fact or occurrence.

948 Circumstantial evidence is that sort of evidence by which an inference of an unknown fact is drawn from the existence of known facts. For example, if, when you went to bed at night, you saw the ground was bare of snow, and in the morning when you awakened you saw the ground covered with snow, while you had not seen the snow fall, nevertheless, you can infer from the evidence you see that it has snowed during the night. That is an illustration of what circumstantial evidence is.

If the facts and circumstances shown by the evidence in this case are sufficient to convince the jury of the guilt of the defendant, beyond a reasonable doubt, then such evidence is sufficient to authorize the jury to find the defendant guilty. The law demands a conviction where there is sufficient legal evidence to show a defendant's guilt beyond a reasonable doubt, and circumstantial evidence is legal evidence.

A witness may be asked to assume something for the purpose of giving his conclusion based upon such assumption. This is called a hypothetical question, and is used in order to obtain the opinion of the witness for the

949 benefit of the jury. You are not bound to accept any such opinion merely because it has been given, but you are obliged to give it the weight to which you believe it is entitled from all the evidence. The jury need not accept any hypothesis or assumption as true unless it is

satisfied from the evidence that the same is true. When the witness in his testimony assumed that certain income was taxable income, and that, therefore, the defendant owed a certain tax thereon, he was allowed to do this merely to furnish the jury with the computation necessary, in case you believe from the evidence, beyond a reasonable doubt, that said income tax taxable income. If you have a reasonable doubt as to whether this was taxable income, then you are not obliged to accept as true the assumption of the witness.

The indictment in this case consists of eight counts. The charges against the defendant on trial, Joseph T. Marzec, are contained in Counts 7 and 8, and you are, therefore, to consider only Counts 7 and 8 of the indictment. Each of these two counts, 7 and 8, charges that the defend-
950 ant, Joseph T. Marzec, is guilty of a separate and distinct crime.

Count 7 of the indictment reads as follows:

"Count Seven.

"The February 1955 Grand Jury further charges: 'That on or about the 15th day of March, 1950, in the Northern District of Illinois, Eastern Division,

Joseph T. Marzec,

late of Chicago, Illinois, who during the calendar year 1949 was married, did wilfully and knowingly attempt to evade and defeat a large part of the income tax due and owing by him and his wife to the United States of America, for the calendar year 1944, by filing and causing to be filed with the Collector of Internal Revenue for the First Internal Revenue Collection District of Illinois, at Chicago, Illinois, a false and fraudulent joint income tax return on behalf of himself and his said wife, wherein it was stated that their joint net income for said calendar year was the

sum of $10,789.43, and that the amount of tax due and owing thereon was the sum of $1,397.64; whereas, as
951 he then and there well knew, he received during the said calendar year additional income consisting of his share of the proceeds from a joint venture conducted by and between Frank A. Brandt, Stanley T. Kusper, Bruno L. Sobieraj, and himself, and that the joint net income for himself and his wife for the said calendar year was, in fact, the sum of $19,830.78, upon which said net income there was owing to the United States of America an income tax of $3,658.16; in violation of 26 U. S. C., Section 145(b).' "

Count 8 of the indictment reads as follows:

"Count Eight.

"The February 1955 Grand Jury further charges: 'That on or about the 15th day of March, 1951, in the Northern District of Illinois, Eastern Division,

Joseph T. Marzec,

late of Chicago, Illinois, who during the calendar year 1950 was married, did wilfully and knowingly attempt to evade and defeat a large part of the income tax due and owing by him and his wife to the United States of
952 America for the calendar year 1950, by filing and causing to be filed with the Collector of Internal Revenue for the First Internal Revenue Collection District of Illinois, at Chicago, Illinois, a false and fraudulent joint income tax return on behalf of himself and his said wife, wherein it was stated that their net income for said calendar year was the sum of $23,881.79, and that the amount of tax due and owing thereon was the sum of $5,077.72; whereas, as he then and there well knew, he received during the said calendar year additional income, consisting of his share of the proceeds from a joint venture con-

ducted by and between Frank A. Brandt, Stanley T. Kusper, Bruno L. Sobieraj and himself, and that the joint net income for himself and his wife for the said calendar year was, in fact, the sum of $65,593.67, upon which said net income there was owing to the United States of America an income tax of $25,423.86; in violation of 26 U. S. C., Section 145(b)."

Each of the above described counts charges a violation of a law of the United States which reads in part as follows:

"Any person who wilfully attempts in any manner
953 to evade or defeat any tax imposed by this chapter or the payment thereof, shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof" be punished.

Generally speaking, the indictment charges the defendant Marzec with wilful attempt to defeat and evade income taxes alleged to be due from him and his wife to the United States for the years 1949 and 1950.

The statute, you will observe, makes it a crime wilfully to attempt "in any manner" to evade or defeat any tax. Accordingly, there are various means that might be used in an attempt to evade or defeat a tax. The indictment here charges that the particular means were the filing of false income tax returns by the defendant for the years 1949 and 1950 in which the joint net income for himself and his wife was understated.

The word "attempt" as used in this statute involves two elements, First, a wilful intent to evade or defeat the tax, and, Second, some act done in furtherance of such intent.

954 The "attempt" contemplated by the statute must be a wilful attempt, that is, the attempt must be intentionally and designedly made and with a purpose to do wrong. Even though you should believe from the evidence that the

returns filed by the defendant Marzec were incorrect, if you further believe that the defendant acted in good faith in making such returns, then the defendant is not guilty of the offenses charged in the indictment. Nor would mere negligence or carelessness, unaccompanied by bad faith, render the defendant guilty. The word "attempt" contemplates that the defendant had knowledge and understanding that, during the respective calendar years 1949 and 1950 he had an income which was taxable and which he was required by law to report, and that he wilfully attempted to evade or defeat the tax thereon, or a portion thereof, by purposely failing to report all the income which he knew should have been reported in his return for those years.

955 In determining whether the defendant Marzec received a net income in excess of that reported in his income tax returns for the years in question you may consider all the facts and circumstances in evidence and view them in relation to each other.

As I have indicated, the question of intent is a matter for you, as jurors, to determine, and, as intent is a state of mind and it is not possible to look into a man's mind to see what goes on there, the only way you have of arriving at the intent of the defendant in this case is for you to take into consideration all of the facts and circumstances shown by the evidence, including the exhibits, and determine from all such facts and circumstances what his intent was at the times in question.

The offenses with which the defendant is charged involve two principal elements, namely, (1) Whether there was due from the defendant Marzec for the years named an income tax in an amount greater than that reported by him, and, if you are convinced that such was the case (2) Whether there was a wilful attempt by the defendant to evade and defeat any part of such taxes in the manner charged.

First, was there an income tax due in excess of the amount reported? If you answer that question in the affirmative, then the further question is, Was there a wilful attempt on the part of the defendant to evade and defeat any part of such tax by means of filing false returns?

The Government is not bound to prove the exact amounts of income charged in these counts to have been received by the defendant Marzec but it will be sufficient to sustain the allegations of these counts, so far as the amount of net income and the amount of taxes due thereon are concerned, if any amounts are shown which are in excess of the amounts reported by the defendant and which show a greater tax due from the defendant than those which are shown upon his returns.

In determining whether or not the defendant failed to correctly report his net taxable income for the years 1949 and 1950, or either of them, you should, of course, consider any evidence of unreported receipts by him during such year. The Government is not required as a part of its case to prove that the defendant did not have unreported expenses or deductions which might offset such unreported receipts, or the exact amount of such expenses if they may appear. However, you should properly consider any evidence of unreported expenses in determining whether the defendant did receive substantial sums of taxable income in excess of such income as reported in his tax returns. If you find from the evidence in the case that the defendant paid commissions to others in excess of the commission payments claimed in his income tax returns, you should, of course, deduct such additional payments from any unreported income received by him, in deciding whether or not he failed to correctly report his taxable income and the tax due.

The Government has introduced evidence which, if believed by you, would tend to prove that the defendant,

Marzec, filed an amended individual income tax return for himself and his wife for the calendar year 1950, in which amended return the net income for such defendant and his wife, and the tax due thereon, were stated to be substantially greater than the net income and tax as stated
958 in the purported original tax return filed by them for such year.

In considering whether the defendant, Marzec, did or did not correctly report his net income and tax for the calendar year 1950, you must determine that issue with regard to the time at which the original income tax return was filed and not as to the time at which the amended return was filed.

You may properly consider such evidence of the filing of an amended tax return for the calendar year 1950 in determining whether the original tax return correctly stated the net income and income tax due for such calendar year.

However, the filing of an amended return is not to be considered by you as evidence of an admission or concession of wilful evasion by the defendant, but only as to the issue of tax deficiency.

If you find that a fraudulent return was filed by the defendant for either 1949 or 1950, with the intent to defeat a part or all of the tax due for such year, and that this was done wilfully, the crime is complete for that year as soon as the filing takes place.

959 The Government through the witnesses Worcester and Ruggaber has offered testimony and exhibits concerning computations prepared by them from exhibits and testimony previously received in evidence, and from the investigation of Agent Worcester to determine unreported commission expenses paid by the defendant to others. The testimony of these witnesses concerning these computations, and the exhibits prepared by them, were offered

and are to be considered by you only as explanations by the witnesses as to what the evidence and the exhibits in the case show.

The testimony of the various witnesses and the exhibits received in evidence, other than the exhibits prepared by the witnesses Worcester and Ruggaber, are controlling. The testimony of the witnesses Worcester and Ruggaber, together with the schedules prepared by them, that is to say, Government's Exhibits 33a, 33b, 38a, 38b, 39 and 40, are to be considered by you merely as a matter of your convenience and are not to be considered as evidence otherwise in this case.

You are instructed that when a fact is stipulated to by counsel, no evidence need be introduced in order to
960 prove such fact, and that you are bound to find, in accordance with a stipulation, or agreement, as though the fact covered by it has in fact been proved by evidence. This applies to both oral and written stipulations.

You have only one duty to perform, and that duty is to tell the court whether or not this defendant is or is not guilty as charged in Counts 7 and 8. Under no circumstances need you consider the matter of punishment. That is a matter committed to the attention of the court alone.

* * * * *

236 IN THE UNITED STATES DISTRICT COURT.
* * (Caption—55-CR.-679) * *

MOTION OF DEFENDANT JOSEPH T. MARZEC TO WITHDRAW A JUROR AND DECLARE A MISTRIAL.

(Filed Feb. 11, 1957. Roy H. Johnson, Clerk.)

Comes now the Defendant, Joseph T. Marzec, by Joseph A. Struett, his attorney, and moves this Court to withdraw a juror and declare a mistrial, and in support thereof, attaches hereto the Affidavit of Joseph A. Struett, his attorney.

Should the above motion be denied, this Defendant, Joseph T. Marzec, through his attorney as aforesaid, moves this Honorable Court that this case be adjourned for a period of ten (10) days to afford his counsel ample opportunity to adequately prepare his defense and to attempt to ascertain just what is going on behind the scenes in this case, and for such further and additional relief as this Court may deem proper. This latter motion is
237 not to be considered as a waiver of the first motion to withdraw a juror and declare a mistrial and should this second motion be denied, then said first motion is again repeated and renewed. All supported by the attached affidavit.

Joseph T. Marzec, *Defendant,*
By Joseph A. Struett, *his Attorney.*

Joseph A. Struett,
Attorney at Law,
105 West Madison Street,
Chicago 2, Illinois,
FRanklin 2-0665.

238 State of Illinois, } ss.
County of Cook. }

Affidavit.

JOSEPH A. STRUETT, being first duly sworn, on oath deposes and says:

Motion to Withdraw a Juror and Declare a Mistrial.

This Deponent, by the verified Motion for a Continuance presented to this Court on February 4, 1957, represented that he was not prepared for trial. The Government took the position that he had had ample opportunity to be prepared and seemingly the Court, in denying said Motion, took the same position. This Motion was denied at approximately 3:30 P.M. on February 4, 1957, and a jury was immediately called and its interrogation began. In denying this Motion, it would appear from the proceedings of January 23, 1957, and again from the proceedings on February 4, 1957, that this Court was largely influenced by the fact that this case was "old and must be disposed of immediately". Presuming, but certainly without conceding, that this Deponent had ample time to prepare for trial herein, as then urged by the Government, the fact still remained uncontroverted that this Deponent was not prepared for trial, and the fact still remained that
239 the Defendant Marzec under the Sixth Amendment of our Constitution was entitled to the benefit of counsel, which certainly should mean a counsel prepared for trial. With the greatest of deference to this Court, it would appear that he disregarded the Biblical admonition "the race is not to the swift, nor the battle to the strong * * *". (*United States* v. *Koplin*, 227 F. 2d 80.)

This Deponent has practiced law for thirty-five years

and never in any case, and he has tried many, has he filed a petition seeking a continuance because he was not prepared. Equally so, he has never gone into the trial of any case for a plaintiff or a defendant unless and until he was most fully prepared for trial since the client is entitled to such service and a client who is represented by an attorney who is unprepared must pay the penalty.

Since the commencement of this trial, the proceedings have continued from 10:00 to 12:30 in the morning and from 2:00 to 4:30 in the afternoon. This Deponent, to the best of his ability, has attempted to keep up with the evidence as it has been presented and at the same time has attempted to prepare for his defense. He has worked every day from 6:00 a.m. until 12:00 a.m. and has been continuously taking sleeping tablets to get even that much sleep. Despite such efforts on his part, he has just been unable to adequately keep abreast of the testimony as
240 it has been going in, keep his wits together, and prepare his defense. During all of said period of time, there was much pressure to keep going, to hurry the case up, and to get the evidence in. As a result of all of this, as of Thursday, February 7, 1957, this Deponent had just reached the point of physical and mental exhaustion. He undertook to make his situation most clear to this Court, with very little success.

This Court has tried many income tax cases and is fully aware of some of the many complications and problems therein, from a factual, legal and accounting standpoint. Equally so is this Deponent. In such cases much documentary evidence is usually offered, which of necessity must be verified and checked. A minimum of opportunity was given this Deponent to check such documentary evidence and much of it went in without this Deponent ever having an opportunity, even as of today, to check it, though the Government's case is now rested.

This Deponent, from 8:00 p.m. yesterday (Thursday), to 1:30 a.m. today, read the voluminous record already made in this case, comprising 532 pages, and most particularly read the testimony of the witness Sobieraj on direct and again on cross-examination. During the course of Mr. Sobieraj's examination, the Government introduced "our" black book as Government Exhibit 33, which the Government used against the Defendant Marzec. The very entries they rely on should appear conclusive that it was not "our" book but the book of the mother-in-law. This book was not evidence of what commissions Sobieraj received from Marzec but rather what portion thereof he turned over to his mother-in-law. This book never should have been offered or received in evidence. And the damage has been done! As this Court knows, the Defendant
241 Sobieraj in this black book, made self serving entries as to the amounts of cash commissions he had received from Mr. Marzec involving innumerable buildings. This Deponent asked for two hours to check this book against the records of the Defendant Marzec, all for the purpose of cross-examination. It was then represented to this Court by the United States Attorney that this Deponent "has known we had this record for a long time". This Deponent then stated that he knew of it the other day, but nobody ever offered it to him. This Court insisted he wanted to go ahead with the lawsuit. This Deponent insisted that he wanted to examine the book, and this Court ordered this Deponent to "proceed with the cross-examination". (Transcript 332-333.) All in the presence of the jury. When it was offered in evidence, this Deponent objected to it, the Court then proceeded to interrogate the witness, and it was received in evidence. On Thursday, February 7, 1957, Mr. Worcester in his direct examination testified that he prepared certain summaries based upon this black book and gave Mr. Marzec credit for only those commissions paid Mr. Sobieraj as shown by this black book.

This Deponent objected to these summaries on the grounds that he had not had an opportunity to examine said black book or a chance to check it. This Court then stated, "You have had it. You had an opportunity before
trial." When this Court was advised this Deponent
242 had not an opportunity before trial, this Court stated
"objection overruled". This Deponent then stated "I saw it for the first time when this trial started". The Court again stated "objection overruled". All in the presence of the jury. (Record 491.)

The representations of the United States Attorney that this Deponent had had an opportunity to examine this book a long time before was a most flagrant misrepresentation of the facts. As will appear from the record, in the proceedings of January 23, 1957, it was represented to this Court that the Defendant Sobieraj when he pled guilty, furnished "new and additional evidence as to the Defendant Brandt and the Defendant Kusper" and that he would make it available to the Defendants and then he stated that they received additional facts which would throw light upon the guiit or innocense of the Defendants Brandt and Kusper, which would not include the Defendant Marzec. On this record, he would say that this book was available to Mr. Marzec after having certainly indicated that Mr. Sobieraj had furnished no additional evidence against Mr. Marzec, and this Court would say, without the semblance of basis of fact, that this Deponent had this book and had an opportunity to examine it before trial; all in the presence of the jury.

As Mr. Sobieraj was about to leave the stand, a motion was made to strike the document on the ground that this Deponent did not have an opportunity to cross-examine
on it. This Court then advised this Deponent that it
243 would be here subject to your examination throughout
the trial. Then the following occurred:

By Mr. Struett: The witness will be available if I want him?

By The Court: That is up to you, if you want him, you get him.

All in the presence of the jury.

As part of this Motion, this Deponent adopts by reference the entire proceedings of February 7, 1957.

This Deponent for several years has not been too well. He has a heart block, as can be verified by his doctors. He has other ailments, some of a rather serious nature, which can equally be verified. He has been recently told to go into the hospital. He has had to slow down in his work and take long rests, and has given serious consideration to retiring from the practice. It is most true as would appear from the record that this Court has seen this Deponent work far more strenuously in other years, but that does not change the present situation. This Deponent sought to make his position most clear to this Court, to comply with every request of this Court, and do everything humanly possible to "hurry up the matter" and "get the evidence in", and at the same time adequately protect his client's interests.

Again referring to the proceedings of the afternoon of February 7, 1957, this Deponent was just physically
244 unable to proceed and adequately represent his client as certainly should appear by this record. Yet, for all practical purposes, he was forced to proceed, making it appear to the jury that he did not know what he was doing, all to the detriment of his client, and even as of today, he does not know whether or not he made adequate motions and whether or not his cross-examination of the parties was adequate, and the Government's case is closed.

On February 8, 1957, the Agents were kind enough when they were assembling their Exhibits to assemble Exhibits for this Deponent, which were in their file, and list them,

and this Deponent went over to their office at 3:00 p. m. to get them. When he signed for them, the Agents advised him that he ought to have Mr. Worcester's work papers in order to check the summaries prepared by Mr. Worcester. Then they told him that he also should have the little black book. So his accountant got these work papers about 4:00 p. m. on February 8, 1957, and the Government had closed its case on the previous day. Deponent's first opportunity to really examine this book was on Feb. 10. He then discovered that it was not his, but hers.

Motion for a Continuance for Ten Days.

With due deference to everybody, this is the screwiest trial that this Deponent has ever been in. It would appear conclusive from this record that Mr. Marzec was sharing these (cash) commissions with these other three Defendants as charged in the indictment. It would equally appear that there is no question but that Mr. Brandt got sub-
245 stantially the amount charged against him by Mr. Marzec in his figures, that Mr. Sobieraj got at least only one-half of the amount presuming anyone is to believe his testimony. The Grand Jury did not—all as shown by the record. Then the Government puts on a witness who conducted an investigation and seemingly determined that Mr. Kusper had not received any of these (cash) commissions, found no evidence to that effect from the evidence offered or his investigation outside the record, and who then gives Mr. Marzec credit for none of the commissions he paid to Mr. Kusper other than the Repsuk checks and possibly others to Kusper which checks were reported. It is this Deponent's recollection that an indictment was filed in this case based upon testimony presented to the Grand Jury. The Grand Jury obviously must have been furnished evidence by the United States Attorney that Mr. Kusper received part of these (cash) commissions for the years in

question. Or the distinguished United States Attorney went into the Grand Jury without the semblance of evidence against Mr. Kusper and returned an indictment charging him with the receipt of these (cash) commissions from Mr. Marzec. The latter is just nonsense. Yet, it is what they would now have this Court and jury believe. It is difficult to comprehend how the United States Attorney can now proceed with Mr. Kusper's prosecution when his witnesses in this case swear that the Government has no evidence against Mr. Kusper as to the receipt of these cash commissions. What is going on? The United States Attorney appears to be attempting to frustrate the very action of the Grand Jury, which action he himself induced. He induced the Grand Jury to indict Mr. Kusper on the 246 theory that he received these cash commissions. Now he would produce evidence that Mr. Kusper is not guilty, in that he did not receive these commissions! It is quite apparent that the United States Attorney is neither thinking or acting straight.

It is undisputed that Mr. Marzec furnished the United States Attorney much evidence and information relating to these commissions and how they were split. This Deponent at least remembers that evidence, and with due deference to the United States Attorney, he has much evidence in his file to establish that Mr. Kusper received part of these commissions and in cash. Certainly the record shows that Mr. Kusper did share in these commissions, at least in part, with checks made out to him with his name spelled backwards. In addition, they have in their files available evidence that Mr. Kusper would expedite certain loans and not expedite others, and much more circumstantial evidence that Kusper actually received these commissions.

When Mr. Miller was on the stand, he testified under oath that he never made out any checks to Mr. Kusper's wife in her maiden name. The Government said they had no such checks. The next day they admitted to this Deponent

that they had the checks. What is the Government doing in this case? Are they so determined to convict Mr. Marzec that they would conceal evidence beneficial to him? If so, they should read *Berger* v. *United States*, 295 U. S. 278, at page 288, and they should also acquaint themselves with the utterances of Judge Igoe in the case of *United States ex rel. Montgomery* v. *Ragen*, 86 Fed. Supp. 382, in which he comments on the duties of a prosecutor to a defendant and on a prosecutor who would conceal evidence beneficial to a Defendant. This situation here is even worse than where this same United States Attorney concealed evidence in the *Goldberg* case.

248 In the light of Mr. Worcester's testimony, seemingly the Defendant Marzec in his defense is to be required to prove the Government's case against Mr. Kusper as alleged in this very indictment. Are we trying Marzec or Kusper here.

When this Deponent argued his motion for a continuance on February 4, 1957, he heard a rumor that the indictment against Mr. Kusper was to be dismissed. He sought to confirm this rumor, both with the United States Attorney and with the attorney for the Defendant Kusper, with little satisfaction from either of them. If this rumor be true, it would appear that the present United States Attorney is a real dealer and horse trader. First he would make a deal with Mr. Marzec to get the other three defendants and then having gotten those of the other three that he wanted, he would make a deal with some of them and Mr. Kusper to get Marzec.

Since the United States Attorney through the testimony of Mr. Worcester has compelled the Defendant Marzec to prove the guilt of Mr. Kusper, and since the Investigating Agents could not find any evidence of these cash payments in Mr. Kusper's books and records, which they examined,

it is quite apparent that the testimony of the Defendant Marzec must be corroborated by a means of much circumstantial evidence which is in the files of the United States Attorney and which Marzec himself furnished them. This may take us several months to go through their files, the Grand Jury testimony, and everything else because we certainly want to make certain that they are not concealing
249 any evidence against Mr. Marzec and we want to make full use of the testimony. It might well be that having concealed this evidence, that the United States Attorney is now bound to take over the representation of Mr. Marzec and proceed with his defense rather than this Deponent. As stated, this Deponent in thirty-five years of practice never ran into such a screwy mess in his life. It is worse than the *Koplin*, *Korer* and *Goldberg* cases in combination.

This Deponent, on February 7, 1957, at the conclusion of the Government's case, represented that he would be ready to proceed with Defendant Marzec's case on Monday, February 11, 1957, though that representation might have been a bit influenced by his physical condition and this Court's insistence that he was going to compel this Deponent to proceed with the defense on Friday, February 8, 1957, Deponent's physical condition and lack of preparation notwithstanding. This Deponent will be "ready". He keeps his bargains. He can but advise this Court that it is quite apparent that the United States Attorney is now out to "get Marzec" and "absolve Kusper", and it is incumbent upon this Deponent to give Mr. Marzec the best representation he knows how to the best of his ability under the circumstances created by this Court. Equally, he is duty bound in the interests of his client to advise this Court that he is not prepared to proceed with the Defendant's case in that it has been impossible for him to examine many of the documents in evidence, to adequately evaluate the issues, to fully interview witnesses, and to prepare in-

structions. In reviewing the record, it would appear that a motion should be made to reopen the Government's case and to conduct further examination of the witnesses of the Government. But, in any event, "if the show must go on" he will be "ready" and will do the best he can to protect the interests of his client. However, nothing herein stated is to be construed as a waiver of any of this Defendant's rights herein should this Defendant be convicted and an appeal be necessary.

These motions are dictated hurriedly to the best of this Deponent's ability. They are probably poorly organ-
250 ized and probably much pertinent matter has been omitted, and this Deponent will have to have these motions written as dictated without reading them or reviewing them. He has done the best he can under the unfortunate circumstances present here.

The record before this Court would seem conclusive that Defendant Marzec had little, if any, representation by competent counsel during the course of the investigation. The testimony of the examining agents clearly indicates that Mr. Marzec's so-called representatives put him in the worse possible position and it all ended up with their assurance that he was hooked and would go to the penitentiary. It would certainly be most unfortunate if this same Defendant were now convicted after having been inadequately represented by counsel who had not been given a full opportunity to prepare for trial. It is this Deponent's position that the computations of the Defendant Marzec's alleged tax liability herein were a fraud on this Court and this Defendant; that they should be thrown out and a verdict of not guilty forthwith directed in favor of the Defendant Marzec.

Further this Deponent sayeth not, except to conclude with the Biblical admonition: "The race is not to the swift,

nor the battle to the strong." (*United States* v. *Koplin*, 227 F. 2d 80.)

Joseph A. Struett.

Subscribed and sworn to before me this 11th day of February, A. D. 1957.

Christine Codner,
Notary Public.

(Notarial Seal)

Filed Feb. 11, 1957. Roy H. Johnson, Clerk.

251 IN THE UNITED STATES DISTRICT COURT.

* * (Caption—55-Cr.-679) * *

Monday, February 11, 1957.

Present: Honorable John P. Barnes, Chief District Judge.

This being the day to which this cause was continued for further trial again comes the United States by the United States Attorney comes also the defendant in his own proper person and by his counsel and the Court being fully advised it is

Ordered that the defendant's motion for judgment of acquittal made at the close of the Government's case be and the same is hereby denied and thereupon the defendant by his counsel enters his motion to wthdraw a juror and declare a mistrial which motion is denied whereupon the defendant by his counsel enters his motion for a continuance of the case which motion is denied and now come the Jury and Alternate Jurors heretofore elected, empaneled and sworn herein for the trial of this cause and the trial proceeds and during the hearing of evidence on behalf of the defendant the hour of adjournment having arrived it is

Further Ordered that the Jury and Alternate Jurors be permitted to separate until February 12, 1957 at 10 a. m.

252 IN THE UNITED STATES DISTRICT COURT.
* * (Caption—55-Cr.-679) * *

Tuesday, February 12, 1957.

Present: Honorable John P. Barnes, Chief District Judge.

This being the day to which this cause was continued for further trial again comes the United States by the United States Attorney comes also the defendant in his own proper person and by his counsel and the Jury and Alternate Jurors heretofore elected, empaneled and sworn herein for the trial of this cause also come and the trial proceeds and during the hearing of evidence on behalf of the defendant the defendant by his counsel enters his motion to withdraw a Juror and declare a mistrial which motion is denied and the trial proceeds and at the close of all the evidence the defendant by his counsel renews his motion to withdraw a Juror and declare a mistrial, filed on February 11, 1957, which motion is again denied and thereupon the defendant by his counsel enters his motion for judgment of acquittal which motion is also denied and the hour of adjournment having arrived it is

Ordered that the Jury and Alternate Jurors be permitted to separate until February 13, 1957 at 10 A. M.

256 UNITED STATES DISTRICT COURT.

• • (Caption—55-Cr.-679) • •

VERDICT.

We, the Jury, find the defendant, Joseph T. Marzec, guilty as charged in counts 7 & 8 of the indictment.

C. Edwin Nelson,
Foreman,

James M. Walsh,
Lyndell Brown,
Fred H. Hitzeman,
William J. Carnell,
William O. Neuman,
Eleanore Quinlan,
Tillie J. Patti,
Irene H. Thomas,
Vincent P. Corbet,
Winifred Sandine,
Lois C. Sherman.

259 IN THE UNITED STATES DISTRICT COURT

For the Northern District of Illinois,

Eastern Division.

United States of America, *vs.* Frank A. Brandt, Stanley T. Kusper, Bruno J. Sobieraj, and Joseph T. Marzec.	No. 55 Cr. 679.

MOTION OF JOSEPH T. MARZEC FOR JUDGMENT OF ACQUITTAL AND, IN THE ALTERNATIVE, MOTION FOR A NEW TRIAL.

(Filed Feb. 18, 1957. Roy H. Johnson, Clerk.)

Joseph A. Struett,
105 West Madison Street,
Chicago 2, Illinois,
FRanklin 2-0665,
Attorney for Defendant
Joseph T. Marzec.

260 IN THE UNITED STATES DISTRICT COURT.

* * (Caption—55-Cr.-679) * *

MOTION OF JOSEPH T. MARZEC FOR JUDGMENT OF ACQUITTAL AND, IN THE ALTERNATIVE, MOTION FOR A NEW TRIAL.

Now comes the Defendant, Joseph T. Marzec, by his attorney, Joseph A. Struett, and moves for judgment of acquittal and for a new trial herein and as grounds therefor, states as follows:

1. The Court erred in refusing to continue this cause until application for executive clemency could be made or

until its dismissal; in refusing a continuance of said cause until the case of the other Defendants herein had been disposed of; and in refusing a continuance of said cause at least for a reasonable time to afford Defendant's counsel sufficient time to adequately prepare for trial, and in support thereof the Defendant hereby adopts by reference and makes a part hereof his printed motions for continuance and other relief filed herein and presented herein on February 4, 1957.

2. The Court erred in denying Defendant's written motion to withdraw a juror and declare a mistrial and for
261 a continuance, which written motion was filed and presented on February 11, 1957, and by reference is made a part hereof, and the Court further erred in again denying said motion to withdraw a juror and declare a mistrial, when it was renewed at the conclusion of all of the evidence.

3. The Court erroneously refused to permit this Defendant as a part of his case in chief to fully, fairly, and completely develop and present his defense to the jury. This Defendant as an accomplice, had admitted his culpability and in a sense was guilty in that he had not correctly reported his true income in the years in question as required by law. As evidence of his willful intent, the Government had introduced these facts and the further fact that he had misrepresented the true situation to the Bureau agents during the course of the investigation.

His defense in substance was:

1. That he was but an employee acting under the direction of his superiors and a victim of circumstances and/or a dupe; and that he could not report all of these commissions without involving his superiors.

2. That the misrepresentations to the agents that he had not received these commissions, most of which he received in cash, were made with the knowledge and upon the advice of the other Defendants herein and his

262 former counsel whom they in fact selected, and upon the assurances of all of them that since cash was involved, it would be hard to prove; that it would be for the best interests of everybody concerned if he denied receipt of these cash commissions; that they had friends within the Bureau; that they would be able to settle this case without injury to this Defendant, and that once this case was settled as aforesaid, they would get the bill and the taxes would be paid.

3. That as a matter of fact, all of them were continuously misleading, deceiving, and "framing" this Defendant and concealing from him the true situation in that they were not making any real effort to settle said case, but rather were attempting to put this Defendant in the most unfavorable position possible with the investigating agents and to "load" upon him all income tax liability, criminal and civil, for all commissions received by him, the largest part of which he had passed on to the other Defendants—the situation was so bad that this Defendant did not know of the denial affidavits given by the other Defendants and the fact that this case had been cleared for prosecution as against him only until nearly a year after the meeting
263 in the Regional Counsel's office (September 12, 1952) when it had reached the office of the United States Attorney, though during the same period this Defendant was repeatedly advised and assured that his case was about to be settled.

4. That once he discovered the true situation, he employed new counsel, was correctly advised, immediately made a full disclosure of the true facts to the Government, and it was entirely through his efforts, cooperation, information, and testimony, with much opposition from the Bureau, that these other Defendants were brought to the bar of justice and at least two of them successfully prosecuted. The strongest evidence of what had actually occurred during the course of the investigation as contended by this Defendant and in defense of his then conduct obviously was what he did and what actually occurred after he had discovered the true situation.

Much of this defense had real substance though some of its aspects might not have been the best. Yet, as a whole, it seemed to have little appeal to the Court. Be this as it may, under our Federal Constitution and our established American system of jurisprudence, this Defendant had a right as a part of his case in chief to fully, fairly, and completely develop said defense in an orderly, organized,
264 complete manner consistent with established rules of procedure and evidence; to corroborate this defense by such facts as were in the files of the United States Attorney in that the United States Attorney is never permitted to conceal evidence beneficial to a defendant, and a right to have a jury of his peers pass on that defense as so developed. Such is the fundamental right of every American citizen and taxpayer and was most erroneously denied this Defendant in this case.

The Court erroneously excluded all evidence subsequent to September 12, 1952, the date of the hearing in the Regional Counsel's office (and denied many offers of proof relative thereto), on the theory that it was immaterial to the issues in this case, and further erroneously concluded that substantially all of Defendant's subsequent acts were merely an attempt on his part to ingratiate himself with the United States Attorney—and, therefore, inadmissible.

As to the event prior to September 12, 1952, the Court erroneously refused to permit the introduction of much pertinent evidence and denied many offers of proof relative thereto. The Court errone usly:

1. Refused to permit this Defendant to fully develop the circumstances under which he employed "his" counsel (recommended by broker Miller) and "paid" him though that employment was directly connected with at least two of the other Defendants, Brandt and Sobieraj.

265 2. Refused to permit this Defendant to fully develop broker Miller's full knowledge of this entire situation

and his relationship with these other Defendants and the investigating agents, even though one of the agents admittedly shortly after he left the Service went to work for Miller's accountant and in turn Miller. The other agent admitted that he was at Miller's office discussing this Defendant's case with Miller and "this Defendant's" attorney. The Court may have erroneously regarded said Miller's position herein much as if he were a stranger to it—"a policeman on the street".

3. Refused to permit this Defendant to fully develop the fact that when his present attorneys were unable to procure the return of certain of this Defendant's exhibits (the Repsuk checks) from the Bureau, said Miller was able to do so, by contacting one of the agents in this case, and refused to permit the checks involved to be received in evidence (Defendant's Exhibits 25 A to 25 I).

4. Refused to permit this Defendant to fully develop the circumstances under which the agents had procured the "non-sharing" affidavit from the Defendant Sobieraj (Defendant's Exhibit 17).

266 5. Refused to require the Government to produce affidavits of similar purport and effect of the other two Defendants, Brandt and Kusper, to have them marked as exhibits for this Defendant, and to permit him to offer them in evidence.

6. Refused to permit the Defendant to develop the circumstances under which broker Miller delivered his affidavit (Defendant's Exhibit 11) to the agents, which affidavit was to the effect that he, Miller, had "dealt only" with this Defendant as to the commissions paid and then refused to permit said affidavit to be received in evidence.

7. Refused to permit this Defendant to offer evidence that the Defendant Sobieraj had arranged a dinner with a third party, whom he, Sobieraj, represented to be from the Internal Revenue Service, and that at this dinner this Defendant was advised by those present that since cash was involved, it would be hard to trace.

8. Refused to permit this Defendant to introduce in evidence pertinent documents properly identified establishing that this Defendant had shared at least part of these commissions with the Defendants Sobieraj and Kusper, and establishing that the investigating agents had knowledge of this fact practically from the inception of this investigation.

267 9. Refused to permit this Defendant to offer evidence that his first knowledge that his case had left the Bureau with its recommendation that he alone be prosecuted was nearly a year later.

10. Refused to admit in evidence the letter and envelope in which it was contained, which accountant Wilson had received on September 25, 1952 from the Regional Counsel's Office, advising him that this Defendant's case had been referred to the Department of Justice, which documents as aforesaid were produced by Mr. Wilson at the trial (Defendant's Exhibits 16 and 16A).

Many of the facts which this Court had excluded as aforesaid, and particularly those subsequent to September 12, 1952, were brought out, or their bringing out was precipitated, by the United States Attorney through his cross-examination, but then they were brought out and crept into the record only in a most incomplete, disorganized, jumbled manner, and then by way of cross-examination they were grossly belittled and distorted as to their true purport and effect, all most adversely to this Defendant. Even then, the Court erroneously:

1. Refused to admit in evidence the lengthy statements which this Defendant had furnished the Government (Defendant's Exhibits 19 and 20).

268 2. Refused to admit in evidence the receipt of Mr. Rieger to agent Wolfe for the return of the Repsuk checks (Defendant's Exhibit 21), the return of which checks had been arranged for by broker Miller after this Defendant's present counsel could not get them.

3. Refused to compel the United States Attorney to produce the Grand Jury testimony of Brandt and

Kusper to the effect that they had received no part of these cash commissions, refused to have said testimony marked as Defendant's exhibits, and refused to permit it in evidence, seemingly on the theory that this Defendant had not offered to prove this fact.

4. Refused to permit the introduction into evidence of Mr. Sobieraj's Grand Jury testimony to like effect (Defendant's Exhibit 18).

5. Refused to permit the introduction into evidence of a certified copy of the Count of the Indictment to which Mr. Sobieraj had pleaded guilty and certified copies of the pleas of guilty of Mr. Sobieraj and Mr. Brandt (Defendant's Exhibits 48 to 50).

6. Refused to permit the introduction into evidence of Mr. Marzec's Grand Jury testimony (Defendant's Exhibit 41).

269 4. The Court erred in permitting the United States Attorney throughout the trial—and particularly during the cross-examination of this Defendant and under circumstances where objections would merely do more harm to the Defendant—to abuse and misuse and turn against this Defendant in a wholly unconscionable manner the information, documents and oral testimony which he had furnished to the United States Attorney long prior to trial and all of which was required, accepted, and used by the United States Attorney in order to bring about the indictment of the other Defendants herein and the successful prosecution of at least two of them. (The United States Attorney apparently in this trial was attempting to try the issues presented by this Defendant's motion of February 4, 1957. If there were factual issues therein involved, obviously evidence should have then been heard before the Court denied said motion.) The United States Attorney persistently made it appear by way of cross-examination that this Defendant "voluntarily" gave this information without any commitment from him, that it was of little value, was inaccurate, and even false, all without ever hav-

ing discussed said information with this Defendant or his counsel prior to trial and all in plain violation of the spirit and letter of the decision of our Supreme Court in *Berger* v. *United States*, 295 U. S. 78, 88. And, this Court er-
270 roneously refused to permit this Defendant to show that the United States Attorney had had this information, factual and documentary, for a long period of time prior to the trial and had never prior to the trial objected to any of it. The conduct of the United States Attorney as aforesaid is emphasized by two illustrations:

1. The United States Attorney without the semblance of justification or fact asked this Defendant—not once, but four times—whether or not it was true that Mr. Reeb, a then Assistant United States Attorney, had at the time this Defendant presented his long written statements (Defendant's Exhibits 19 and 20), warned him that he was in effect signing "a death bed confession". Obviously, as appears from Mr. Reeb's own testimony offered by the Government, no such warning was ever given, and this reprehensible conduct of the United States Attorney was just one "foul" blow after another, and four times in succession.

2. On cross-examination, this Defendant was interrogated as to his appearance and testimony before the Grand Jury. The United States Attorney then immediately produced his Grand Jury testimony and immediately undertook to ask him several stock questions
271 from that transcript to the effect that he had voluntarily testified. Then, after he brought out that this Defendant had, pursuant to agreement with his counsel, been asked only certain specific questions, obviously the amounts of these commissions which he had passed on to each of these Defendants, he objected to this Defendant testifying to this latter fact, and then objected to the introduction of his entire Grand Jury testimony to like effect, and this Court erroneously sustained said objections and erroneously refused to strike out the several stock questions.

As part of this same situation, the United States Attorney from the very inception of this case up to its termination was guilty of much misrepresentation of the true facts herein, both to this Court and to the jury by means of half-truths and distortion of facts and evidence. He seemingly was determined to force this Defendant to trial despite the fact that his counsel was not prepared for trial and was not well. He took every advantage of this fact at every opportunity, and in every conceivable way, all to obtain a "conviction", regardless of how much error crept into the record. As would appear from numerous objections he made, the United States Attorney seemingly was
of the opinion that this Defendant through his own
272 witnesses was not entitled to contradict the evidence
of any Government witness except to impeach that witness and that defense counsel had not laid a proper foundation for such impeachment, and this Court erroneously sustained most of such objections of the United States Attorney to evidence which was clearly admissible on behalf of this Defendant.

The United States Attorney was forthright with this Court, defense counsel, and jury about nothing. One glaring illustration should suffice: When Miss Sipiora was on the stand and the evidence disclosed that she had been subpoenaed but told to stay away, the United States Attorney did not hesitate to infer that he still had Mr. Kusper's case to try and that her testimony would then be required, even though, as this Defendant's counsel has now been advised, he then had in his possession authority from the Attorney General dated January 31, 1957 authorizing him to dismiss the case as against Mr. Kusper.

The motion to dismiss as to the Defendant Kusper may be presented to the Court before this motion for a new trial is filed. Should the United States Attorney represent that he has insufficient evidence to prosecute, and

that would seem to be the only reason for his action, it would at once appear that he either misrepresented the true facts to the Grand Jury or that he is now attempt-
273 ing to frustrate and is frustrating the action of the Grand Jury in indicting Mr. Kusper, which action he himself induced. As will hereafter appear, he had before the Grand Jury and still has the benefit of Mr. Marzec's direct testimony that he shared these commissions received in cash with Mr. Kusper. He also then had and still has much additional circumstantial evidence corroborating the direct evidence of Mr. Marzec, much of which we ourselves furnished him, and even much which he himself obtained. In addition, on January 23, 1957, he represented to the Court that he had but recently procured additional evidence against Mr. Kusper. We have since been advised by him that this additional evidence was to the effect that one Kazor had also shared commissions with Mr. Kusper during the years in question, which commissions Mr. Kusper did not report. These facts are most pertinent as reflecting the unconscionable conduct of the United States Attorney in this entire matter. And, particularly so when we consider the fact that he put Agent Worcester on the stand and had him testify in effect that as a result of his investigation he could discover no evidence that Mr. Kusper had shared in these commissions (other than the checks he received), thus attempting to establish that Mr. Marzec's testimony was false. It would appear that this ever shifting United States Attorney was so intent on obtaining a "conviction" against Mr. Marzec that he
274 not only may well have concealed evidence beneficial to Mr. Marzec, but even worse may well have made use of false testimony to effectuate his intent.

5. This Court erroneously admitted in evidence the "little black book" of Mr. Sobieraj (Government's Exhibit 33) without affording Defendant's counsel adequate oppor-

tunity to examine same and cross examine as to same, and erroneously refused to strike Mr. Sobieraj's testimony and said document when it appeared that Mr. Sobieraj's testimony was false in that said document was only the cash book of his mother-in-law, did not contain all the commissions he (Sobieraj) had received from this Defendant, and that said book was not admissible against this Defendant for any purpose. In addition, the Court erred in refusing to strike the testimony of Agent Worcester and his computations which were admittedly based in part upon said black book.

6. The Court erroneously excluded Defendant's offered evidence to the effect that the arrangements between these Defendants as to their proportionate sharing of these commissions had been partially changed in 1951 and further changed in 1952; that this latter change was at the direction of the Defendant Sobieraj and agreed to by the Defendant Brandt; that it was to the effect that he (Sobieraj) should thereafter receive 2 points or about one-half of said commissions; that pursuant to said latter
275 change, Mr. Sobieraj did receive said 2 points and that this Defendant paid him said 2 points by way of checks and had complete then present and available records and cancelled checks to establish that fact. The exclusion of this evidence was particularly damaging to this Defendant since the Government had made it appear through the testimony of Mr. Sobieraj that he, Sobieraj, during the years in question (1949 and 1950) was the object of this Defendant's bounty as to the share of commissions he received, that there was no express agreement between the parties, and that he, Sobieraj, received and accepted whatever share of said commissions that this Defendant desired to give him.

7. The Court committed many errors in relation to the Government's Exhibits 41 and 42, remarked as Defend-

ant's Exhibits 45 and 46. Basically these were summary sheets prepared by Mr. Marzec from available records of himself and the Union, showing the names of the brokers, the addresses of the properties on which particular loans were made, the total commissions received on each loan, and how the commissions were divided between the parties to the joint venture, with the total commissions received by each Defendant for 1949 (Defendant's Exhibit 45) and for 1950 (Defendant's Exhibit 46). The brokers involved, the amounts of the loans, the parties involved, and the commissions paid, all could be readily verified and
276 checked, and substantially appear as part of the Government's case. The distribution of the commissions paid the other members of the joint venture was obviously dependent upon Mr. Marzec's version and later given testimony, first before the Grand Jury and then in open court of the agreement of distribution. All supported by certain sheets of original entry, some of which he still retains (Exhibits 34 to 41), also supported by a net worth statement prepared by his accountant, and supported by much other circumstantial evidence. He prepared these summaries for presentation to the United States Attorney so that he could present definite figures to the Grand Jury as to exactly the amount of these commissions received by each Defendant. They were delivered to the United States Attorney, used by him in support of Mr. Marzec's testimony before the Grand Jury, and no objection was ever made to them prior to the trial. Yet, the Court erroneously refused to permit this Defendant to show all these facts, though some of them did get into evidence in a haphazard manner.

Then, after the United States Attorney had interrogated this Defendant concerning these two documents and cast aspersions upon them, the Court again erroneously denied Defendant's offer of proof as to the circumstances under

which they were prepared and the testimony of his accountant. Seemingly, on the theory that the Court regarded them as manufactured evidence. These documents and
277 the offered testimony were clearly admissible and the error in denying their admission was magnified when the United States Attorney throughout his argument to the jury emphasized and re-emphasized that Mr. Marzec had failed to produce any evidence showing the amounts of these commissions which he had paid over to each of the other Defendants.

8. The Court erred in refusing to strike the testimony of Agent Worcester, his compilations and computations. and the testimony of Agent Ruggaber whose expert testimony was based upon Mr. Worcester's computations as aforesaid, in that Defendant's counsel was not afforded ample opportunity to cross-examine said Worcester and pertinent records involved and for other reasons then and here stated. Agent Worcester in his testimony and computations admitted that he had given this Defendant credit only for such commissions distributed to Mr. Sobieraj as they appeared in the little black book produced by Mr. Sobieraj (Government's Exhibit 33). Since this book was inadmissible for any purpose, this testimony of Mr. Worcester should not have been permitted to stand. This Court then erroneously permitted Mr. Worcester to testify that he allowed this Defendant credit for no commissions paid Mr. Kusper other than the Kusper and Repsuk checks (Kusper spelled backwards), in that he had examined Mr. Kusper's books which failed to show the receipt of any additional commissions and Mr. Kusper had told him
278 he had received none, and in effect that his investigation failed to disclose any evidence that Mr. Kusper had received part of these commissions in cash as testified to by Mr. Marzec.

Mr. Worcester's testimony in this regard would appear

to be patently false. He had available to him Mr. Marzec's testimony before the Grand Jury, which was accepted by the Government, that he, Mr. Marzec, had shared these cash commissions with Mr. Kusper. In addition, he had available to him much other circumstantial evidence corroborating this testimony of Mr. Marzec. He had available to him the testimony of Dorothy E. Sipiora, Mr. Kusper's former secretary for a number of years, and her signed statement used before the Grand Jury (Defendant's Exhibit 22), which included Mr. Kusper's admissions to her that he, Kusper, had shared in these commissions until the Union convention in September of 1950. Also, her affidavit furnished him (Defendant's Exhibit 51) to the substantial effect that Mr. Kusper also kept a "little black book" as to these commissions received. Agent Worcester also had available to him the information furnished him by Mr. Mroz, who had been Mr. Kusper's assistant for a period of approximately four years, which information and evidence appears herein by proof and offer of proof. Also, he had available to him evidence that Mr. Kusper had shared in commissions paid others during the years in question which he had not reported.

279 The Court erroneously excluded this Defendant's Exhibit 22, Miss Sipiora's statement, and her affidavit (Defendant's Exhibit 51), and the testimony and offered testimony of Mr. Mroz, apparently on the theory that we were not trying Mr. Kusper here. All this evidence was admissible in corroboration of Mr. Marzec's testimony that he had shared these commissions with Mr. Kusper, and, in addition, to prove the falsity of Mr. Worcester's testimony and computations.

Again, the Court erred in denying this Defendant's motion to strike Mr. Worcester's testimony, his computations, and Mr. Ruggaber's expert testimony founded on

Mr. Worcester's testimony and computations for all of the above reasons and for the further reason that his computations were speculative, capricious, irresponsible, and senseless.

9. This Court erroneously refused to give defense counsel adequate time in which to prepare and submit adequate instructions on Defendant's behalf. In addition, the Court refused to give to the jury a tendered instruction of this Defendant to the effect that they could find this Defendant guilty of a lesser crime than the crime charged in each count of the income tax indictment. This instruction was patterned upon the refused instruction given in the *Berra* case, the refusal of which the Supreme Court held was proper. *Berra* v. *United States*, 351 U. S. 131. In tendering this instruction to the Court, defense counsel advised the Court of this fact and further advised the Court that he understood that the Supreme Court was again considering this problem in the *Costello* case.

The Court also erred in giving to the jury Government's Instruction No. 8, in that it was separate and apart from all other instructions given; it lacked clarity; confounded an investigation of Agent Worcester made outside the record of this case with the evidence and exhibits in this case; and erroneously permitted the jury to consider matters outside the record.

10. This Defendant was denied his Constitutional right to a fair trial (as heretofore developed and as here appears) and deprived of the right of counsel as provided for in the Sixth Abendment of our Constitution. He was in fact subjected to a trial by force with his counsel not prepared or well, and subjected to a "rush, hurry-up" trial to get the "evidence in", even without affording, even a prepared and well counsel, ample opportunity to cross-examine and examine documents necessary for such

280

cross-examination. As this trial was conducted, it was humanly impossible for this Defendant's counsel, even if prepared and well, to keep up with the evidence, to adequately protect the interests of this Defendant and give required attention to matters of his defense. These facts
are not answered by the Court's statement to De-
281 fendant's counsel on February 11, 1957, "If you are
not prepared, it is your own fault", and then insisting "I want you to go ahead and give him a fair trial."

11. There are facts here involved which required the Court "in solicitude for the essential rights of the accused" to have paused and inquired further before he permitted this case to go to the jury, even aside from the action of the United States Attorney heretofore developed. It is undisputed from the record that one of the Revenue Agents herein was in communication with Mr. Wilson about this case even before this Defendant knew or employed said Mr. Wilson. These "non-sharing" affidavits of the other three Defendants in combination stand out "like a sore thumb". There is not the semblance of justification for them, or the semblance of explanation as to why they were obtained, the circumstances under which they were obtained, and/or why they were a part of the files in this case. Admittedly, one of the Agents purchased a building from Broker Miller on which the Union had made a loan. As appears from this Defendant's Exhibits 19 and 20 (the lengthy statements) this loan was made by "this Defendant's" former attorney. Much additional evidence on this same subject appears in said Exhibits, appears herein, and also appear in the statement of Miss Sipiora (Defendant's Exhibit 22). The Govern-
ment's evidence was conclusive that these Agents were
282 advised from the very beginning that this Defendant
was only a collector. Yet, this case was cleared by the Bureau into Justice, recommending only the prosecu-

tion of Mr. Marzec, with affidavits of these other three Defendants to the effect that they had received no part of said commissions. All these facts in combination certainly furnish at least a most strong suspicion that all was not well in connection with the investigation of this case by the Bureau, and that this investigation most certainly was not as it should have been.

12. There appears herein a set of facts so repulsive to a due and proper administration of our Revenue laws and so obnoxious to a due and proper administration of Federal Criminal Justice by our Federal Courts that the Court erred in denying Defendant's motions for a directed verdict (acquittal) both at the close of the Government's case and at the close of all the evidence. And, this Defendant is now entitled as a matter of law to have his motion for a new trial granted, his conviction set aside, and a judgment of acquittal entered in his favor and he so moves.

Respectfully submitted,

Joseph A. Struett,
Attorney for Defendant
Joseph T. Marzec.

Joseph A. Struett,
Attorney at Law,
105 West Madison Street,
Chicago 2, Illinois,
FRanklin 2-0665.

1 IN THE UNITED STATES DISTRICT COURT.
* * (Caption—55-Cr.-679) * *

(Filed Mar. 8, 1957. Roy H. Johnson, Clerk.)

TRANSCRIPT OF PROCEEDINGS

had in the above-entitled cause before the Honorable John P. Barnes, Chief Judge of said Court, in his court room in the United States Court House at Chicago, Illinois, on Monday, February 18, 1957, at 10:00 o'clock a. m.

* * * * *

2 And thereupon the following proceedings were had herein:

By the Clerk: No. 55 CR 679. The United States *vs.* Stanley T. Kusper. For trial.

By Mr. Manion: Your Honor, at this time the Government would move to dismiss Counts 3 and 4 of the indictment relating to the defendant Stanley T. Kusper for lack of sufficient evidence with regard to each one of the Government's charges.

By the Court: Make the order.

By Mr. Sokol: Thank you.

By Mr. Manion: And we would move the Court to continue the matters as to defendants Sobieraj and Brandt until Thursday next, February 21, at which time the motion for judgment as to the defendant Marzec will be heard.

By the Court: All right.

By Mr. Struett: I want to renew my motion for acquittal, your Honor; I just gave it to the Clerk.

By the Court: Very well. Continued to the 21st.

283 IN THE UNITED STATES DISTRICT COURT.

For the Northern District of Illinois,

Eastern Division.

Monday, February 18, 1957.

Present:

Honorable John P. Barnes, Chief District Judge.

United States of America
vs.
Stanley T. Kusper. } No. 55 CR 679

On motion of the Government by the United States Attorney it is

Ordered that the Indictment herein be and the same is hereby dismissed as to the defendant Stanley T. Kusper.

284 IN THE UNITED STATES DISTRICT COURT

For the Northern District of Illinois,

Eastern Division.

Monday, February 18, 1957.

Present:

Honorable John P. Barnes, Chief District Judge.

United States of America
vs.
Frank A. Brandt. } No. 55 CR 679

On motion of the Government by the United States Attorney it is

Ordered that this cause be and the same is hereby continued to February 21, 1957 at 10 A.M. for disposition as to the defendant Frank A. Brandt.

285 IN THE UNITED STATES DISTRICT COURT
For the Northern District of Illinois,
Eastern Division.

Monday, February 18, 1957.

Present:
Honorable John P. Barnes, Chief District Judge.

United States of America
vs.
Bruno L. Sobieraj } No. 55 CR 679

On motion of the Government by the United States Attorney it is

Ordered that this cause be and the same is hereby continued to February 21, 1957 at 10 A.M. for disposition as to the defendant Bruno L. Sobieraj

286 IN THE UNITED STATES DISTRICT COURT
For the Northern District of Illinois,
Eastern Division.

Monday, February 18, 1957.

Present:
Honorable John P. Barnes, Chief District Judge.

United States of America
vs.
Joseph T. Manser } No. 55 CR 679

This day comes the United States by the United States Attorney comes also the defendant Joseph T. Manser by his counsel and enters his motion to renew his motions for a directed verdict (judgment of acquittal) and file with his motion for a new trial said motion for judgment of acquittal which motion is entered and continued to February 21, 1957 at 10 A.M.

287 IN THE UNITED STATES DISTRICT COURT

For the Northern District of Illinois,

Eastern Division.

Monday, February 18, 1957.

Present:

Honorable John P. Barnes, Chief District Judge.

United States of America
vs.
Stanley T. Kusper } No. 55 CR 679

On motion of the surety defendant Stanley T. Kusper and upon consent of the Government it is

Ordered that the Clerk of this Court be and he is hereby authorized and directed to return to said surety the sum of Two Thousand Dollars heretofore deposited as security for bond in the above entitled case.

288 IN THE UNITED STATES DISTRICT COURT

For the Northern District of Illinois,

Eastern Division.

United States of America
vs.
Frank A. Brandt. } No. 55 CR 679

This cause this day coming on for disposition on a plea of guilty heretofore entered to Count 1 of the Indictment comes the United States by the United States Attorney comes also the defendant Frank A. Brandt in his own proper person and by his counsel and being asked by the Court if he has any reasons why sentence and judgment of the Court should not now be pronounced upon him and showing no good and sufficient reasons why sentence and judgment should not now be pronounced it is therefore considered and

Ordered and Adjudged by the Court and is the sentence and judgment of the Court upon the plea of guilty so interposed herein as aforesaid that the defendant Frank A. Brandt be and he is hereby committed to the custody of the Attorney General of the United States or his authorized representative for imprisonment for a period of One (1) Year on Count 1 of the Indictment and it is

Further Ordered that the defendant's motion that he be placed on probation be and the same is hereby denied and on motion of the defendant it is

Further Ordered that execution of sentence be and the same is hereby stayed until March 4, 1957 at 10 A.M. and that the defendant's present bond shall remain in full force and effect.

John P. Barnes,
United States District Judge.

February 21, 1957.

289 IN THE UNITED STATES DISTRICT COURT

For the Northern District of Illinois,

Eastern Division.

United States of America
vs.
Bruno L. Sobieraj. } No. 55 CR 679

This cause this day coming on for disposition on a plea of guilty heretofore entered to Count 5 of the Indictment comes the United States by the United States Attorney comes also the defendant Bruno L. Sobieraj in his own proper person and by his counsel and being asked by the Court if he has anything to say why the sentence and judgment of the Court should not now be pronounced upon him and showing no good and sufficient reasons why sentence and judgment should not now be pronounced it is therefore considered and

Ordered and Adjudged by the Court and is the sentence and judgment of the Court upon the plea of guilty heretofore interposed herein as aforesaid that the defendant Bruno L. Sobieraj be and he is hereby committed to the custody of the Attorney General of the United States or his authorized representative for imprisonment for a period of One (1) Year on Count 5 of the Indictment.

It Is Further Ordered and Adjudged that execution of sentence be and the same is hereby suspended and that the defendant be placed on probation for a period of Two (2) Years in accordance with a probation order entered simultaneously herewith.

John P. Barnes.

February 21, 1957.

290 IN THE DISTRICT COURT OF THE UNITED STATES

For the Northern District of Illinois,

Eastern Division.

United States of America
vs.
Bruno L. Sobieraj
} No. 55 CR 679

PROBATION ORDER.

It appearing to the Court from an inspection of the records of this Court in the above entitled cause that on the 21st day of February, 1957, the defendant, Bruno L. Sobieraj having pleaded guilty as charged in Count 5 of the indictment heretofore filed herein against him for violation of Section 145(b), Title 26, United States Code (Wilfully and knowingly attempt to evade and defeat a part of income tax due and owing to the United States) was duly committed to the custody of the Attorney General for and during a period of One (1) Year.

And it further appearing to the satisfaction of the Court that the ends of justice and the best interests of the public, as well as of the defendant, will be subserved by the suspension of the execution of sentence as to Count 5 of the indictment and by placing the defendant on probation as to said Count 5:

It is therefore Considered, Ordered and Adjudged by the Court that pursuant and subject to "An Act to Provide for the Establishment of a Probation System of the United States, except in the District of Columbia," approved May 4, 1925, as amended, the execution of the sentence on Count 5 of the indictment be and the same is hereby suspended and the defendant be and is hereby placed on probation to the Chief Probation Officer of this Court for

the term of Two (2) years from and after February 21, 1957 under the following terms and conditions:

The Probationer shall:

(a) Report to the Chief Probation Officer in writing, or otherwise if the Chief Probation Officer so directs, once each month, or oftener if the Court or the Chief Probation Officer so directs, his post office address, whereabouts, conduct, and employment, and such other information as may from time to time be required by the Court or by the Chief Probation Officer;

(b) Refrain from the violation of any State or Federal penal law;

(c) Live a clean, honest and temperate life, keep good company and good hours;

(d) Work regularly at some gainful and useful employment, and when out of work, notify the Chief Probation Officer at once;

(e) Follow the advice and instruction of the Chief Probation Officer regarding employment, recreational, social and other activities;

(f) Provide for the support of any person or persons for whose support he is legally liable;

(g) Notify the Chief Probation Officer at once if he intends to change his address;

(h) Pay the fine imposed by the Court in said case as follows:

(i) Pay into the office of the Clerk of this court

for the use of _____ (Name) _____ (Address) the sum of $_____

for the use of _____ (Name) _____ (Address) the sum of $_____

for the use of _____ (Name) _____ (Address) the sum of $_____

as restitution to said respective persons for the actual damage or loss which the Court finds has been caused to said respective persons by h__ said offense, payment to be made as follows:

(j) Not leave or remain away from the judicial district in which he resides without the consent of the Court or of the Chief Probation Officer;

(k) Keep and observe the following special terms and conditions of probation:

Enter:

John P. Barnes,

Dated: February 21, 1957 *Judge.*

291 IN THE UNITED STATES DISTRICT COURT

For the Northern District of Illinois,

Eastern Division.

United States of America
vs.
Joseph T. Marzec } No. 55 CR 679

This cause this day coming on for hearing on the defendant's motion for a new trial and for disposition comes the United States by the United States Attorney comes also the defendant Joseph T. Marzec in his own proper person and by his counsel and the Court having heard the arguments of counsel and being fully advised in the premises it is

Ordered that the motion of the defendant for judgment of acquittal or in the alternative for a new trial be and the same is hereby overruled and denied and the defendant being asked by the Court if he has anything to say why the sentence and judgment of the Court should not now be pronounced upon him and showing no good and sufficient reasons why sentence and judgment should not now be pronounced it is therefore considered and

Ordered and Adjudged by the Court and is the sentence and judgment of the Court upon a verdict of guilty

heretofore rendered herein that the defendant Joseph T. Marzec be and he is hereby committed to the custody of the Attorney General of the United States or his authorized representative for imprisonment for a period of Three (3) years on each of Counts 7 and 8 of the Indictment, that said sentences shall run concurrently and it is

Further Ordered that the defendant's motion that he be placed on probation be and the same is hereby denied and it is

Further Ordered that bail of the defendant pending appeal be and the same is hereby fixed at the sum of Ten Thousand Dollars ($10,000.00).

February 21, 1957 John P. Barnes.

292 IN THE DISTRICT COURT OF THE UNITED STATES

For the Northern District of Illinois,

Eastern Division.

United States of America
vs.
Joseph T. Marzec
} No. 55 CR 679

NOTICE OF APPEAL.

(Filed Feb. 21, 1957. Roy H. Johnson, Clerk.)

Name and address of Appellant:

Joseph T. Marzec, 4182 W. Barry Ave., Chicago, Ill.

Name and address of Appellant's attorney:

Joseph A. Struett, 105 W. Madison St., Chicago, Ill.

Offense:

Attempting to defeat and evade his income taxes for the years 1949 and 1950 in violation of 26 U. S. C., Section 145B.

Concise statement of judgment or sentence and date thereof:

Defendant committed to the custody of the Attorney General for Three (3) Years, each on Two counts of the Indictment, said sentence to run concurrently Sentence imposed February 21, 1957.

Name of prison where now confined, if not on bail:

Custody of the United States Marshal, United States Post Office Bldg., Adams and Clark Sts., Chicago, Ill.

I, the above-named Appellant, hereby appeal to the United States Circuit Court of Appeals for the Seventh Circuit from the judgment above-mentioned.

(Signed) Joseph T. Marzec,

Appellant,

By Joseph A. Struett,

Attorney for Appellant.

Dated: February 21, 1957

LIBRARY
SUPREME COURT

Office - Supreme Court, U.S.
FILED
FEB 6 1958
JOHN T. FEY, Clerk

No. 772

In the United States Court of Appeals
For the Seventh Circuit

No. 11979

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

vs.

JOSEPH T. MARZEC,
Defendant-Appellant.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

Honorable John P. Barnes, Trial Judge.

APPELLEE'S APPENDIX.

R. TIEKEN,
United States Attorney.

JOHN PETER LULINSKI
ALBERT F. MANION
Assistant United States Attorneys
Of Counsel

U. S. C. A. - 7
FILED
1957
CLERK

The Scheffer Press, Inc., Chicago, Illinois

INDEX

PAGE

Motion for Severance, filed January 16, 1956 1

Order, January 16, 1956—setting date for hearing on motions for severance 1-2

Government's answer to motions for severance, filed January 20, 1956 2

Memorandum of authorities in opposition to motions of severance, filed January 20, 1956 4

Reply of Joseph T. Marzeo to Government's Answer to his motion for a severance, filed January 23, 1956 6

Transcript of proceedings, had January 23, 1956 re motions of severance 8

Colloquy 8-35

Transcript of proceedings had on February 20, 1956 —on arraignment and pleas, and to set for trial; re motion for bill of particulars; defendant's motions under rule 16 and 17(c), etc. 36-83

Transcript of proceedings had on August 24, 1956— re motion for order under Rule 17(c) for examination of certain records 83-90

Transcript of proceedings had on September 10, 1956, colloquy 90-91

Transcript of proceeding had on February 4, 1957— re motion to vacate order of January 23, colloquy 92-123

Transcript of proceedings had on February 4, 1957 124

Opening statement on behalf of Government 125-127

Opening statement on behalf of defendant 127-134

Colloquy 175-176, 313-320, 349-352, 371-381

PAGE

Transcript of Proceedings had on Feb. 13, 1957 427

Closing Argument on Behalf of Defendant, by Mr. Struett 427

Closing Argument on Behalf of Government by Mr. Manion 443

WITNESSES.

For Government:

Max E. Miller—
Direct Examination by Mr. Manion 135
Cross Examination by Mr. Struett 144
Redirect Examination by Mr. Manion 162

Henry S. Banach—
Direct Examination by Mr. Manion 165
Cross Examination by Mr. Struett 176

Arthur Wilson—
Direct Examination by Mr. Manion 182
Cross Examination by Mr. Struett 193
Redirect Examination by Mr. Manion 203, 206
Recross Examination by Mr. Struett 204, 206

Bruno L. Sobieraj—
Direct Examination by Mr. Manion 208
Cross Examination by Mr. Struett 216
Redirect Examination by Mr. Manion 242, 245
Recross Examination by Mr. Struett 244

Samuel J. Osheroff—
Direct Examination by Mr. Manion 245
Cross Examination by Mr. Struett 259
Redirect Examination by Mr. Manion 273

Leonard B. Wolfe—
Direct Examination by Mr. Manion 274
Cross Examination by Mr. Struett 280

Kenneth N. Worcester—
Direct Examination by Mr. Manion 297
Cross Examination by Mr. Struett 304

PAGE

For Defendant:

Joseph T. Marzec—
Direct Examination by Mr. Struett 321
Cross Examination by Mr. Manion 381
Redirect Examination by Mr. Struett 401
Recross Examination by Mr. Manion 410

EXHIBITS.

For Government:

No. 1—U. S. Individual Income tax return for 1949 of Joseph T. & Florence Marzec (p. 1 and Schedule C only) 457-458

No. 2—U. S. Individual Income Tax return for 1950 of Joseph T. & Florence Marzec (p. 1 and Schedule C only) 459-460

No. 3—Amended U. S. Individual Income Tax Return for 1950 of Joseph T. and Florence Marzec (p. 1 and schedule C only) 461-462

No. 38-A—List of commissions, 1949 463

No. 38-B—List of Commissions, 1950 464

No. 39—Item adjustments, year ended Dec. 31, 1949 .. 465
Operating statement 466
Computation of Income tax, etc. 467

No. 40—Item adjustments, year ended Dec. 31, 1950 .. 468
Operating statement 469
Computation of income tax, etc. 470
Computation of alternative tax—individual 471

Defendant's:

No. 15-15A and 15B—Testimony of Joseph T. Marzec taken April 12, 1951 473-476

No. 33—Transcript of proceedings had on September 12, 1952 477-502

Nos. 34, 35, 36, 37, 38, 39, 40, 41, 42—handwritten notes 503-511

APPELLEE'S APPENDIX.

21

IN THE UNITED STATES DISTRICT COURT
• • (Caption—No. 55 CR 679) • •

MOTION
(filed Jan 16 1956)

Comes now the defendant, Joseph T. Marzek, by Joseph A. Struett, his attorney, and respectfully requests that an order be entered by this Honorable Court granting a severance to said Joseph T. Marzek in the above cause.

In support of the above motion, the defendant, Joseph T. Marzek, represents to this Court that his interests in the above cause are antagonistic to those of the other defendants herein and that the Government and the United States Attorney have full knowledge of the facts establishing the antagonistic interests as aforesaid.

Joseph T. Marzek
By /s/ Joseph A. Struett,
Joseph A. Struett, His Attorney.

Joseph A. Struett
105 West Madison Street
Chicago 2, Illinois
FRanklin 2-0665

22

IN THE UNITED STATES DISTRICT COURT
• • (Caption—No. 55 CR 679) • •

Monday, January 16, 1956
Present: Honorable John P. Barnes, Chief District Judge

• • (Caption—No. 55 CR 679) • •

This day comes the United States by the United States Attorney come also the defendants Frank A. Brandt,

Stanley T. Kusper, Bruno L. Sobieraj and Joseph T. Marzec in their own proper persons and by their counsel and the defendant Stanley T. Kusper being arraigned upon the Indictment filed herein again him pleads not guilty thereto and it is

Ordered that hearing on all motions for severance be and the same is hereby set for January 23, 1956 at 10 A. M. and it is

Further Ordered that the defendants be and they are hereby given 2 weeks from this date to file all other motions, that the Government be and is hereby given 10 days thereafter to file answers thereto and that the hearing on said motions, the arraignment and plea and to be set for trial as to the defendants Frank A. Brandt, Bruno L. Sobieraj and Joseph T. Marzec and the motion to set the cause for trial as to the defendant Stanley T. Kusper be and they are hereby set for February 20, 1956 at 10 a. m.

36

IN THE UNITED STATES DISTRICT COURT

• • (Caption—No. 55-CR-679) • •

GOVERNMENT'S ANSWER TO MOTIONS FOR SEVERANCE

(Filed Jan 20 1956)

Now comes the United States of America, by R. Tieken, United States Attorney, and states the following:

1. Upon trial of the above entitled cause, it is anticipated that the evidence will show that:

A. During the taxable years 1949 and 1950, the defendants, Frank A. Brandt and Stanley T. Kusper, were officers of the Polish Roman Catholic Union of America, being respectively the Treasurer and General Counsel of said organization. During the same years, the defendant, Joseph T. Marzec, was an employee of the organization, and the defendant, Bruno L. Sobieraj, was employed as an appraiser in real estate transactions.

B. In connection with the application for and approval of certain real estate mortgage loans made by the Union during the said years, the defendants herein entered into a joint venture whereby payments, in addition to those customarily required by the Union on real estate loans, were required to be made to the defendant, Joseph T. Marzec, and were in fact made to him by certain real estate brokers in order to obtain favorable action and approval on advantageous terms to said brokers of mortgage loans submitted to the Union.

C. In accordance with the understanding by and between the defendants, the defendant, Joseph T. Marzec, retained his share of the proceeds and distributed the balance collected from these transactions to the other defendants.

37 D. Each of the defendants during the said years attempted to evade the tax due and owing on his share of the proceeds of the joint venture by failing to report certain sums received from the said joint venture.

2. All of the unreported income and evaded taxes charged to each defendant as set forth in the indictment are based upon and arise from the receipt by each defendant of his respective share of the proceeds of the joint venture referred to previously. No other source of unreported income will be presented in this case.

3. The Government submits from its knowledge of the evidence expected to be produced in court that:

A. A joint trial of the defendants will result in a substantial saving of time by avoiding the presentation to four separate juries of considerable evidence common to all defendants.

B. A joint trial can be held without confusing the jury, without prejudice to the defendants' rights, and without creating complexing and unmanageable problems

during the course of trial which certain defendants seem to anticipate. If counsel for the defendants truly desire to avoid confusion and complexity as they seem to indicate in their motions, with their cooperation toward that goal an orderly joint trial of this case may be conducted.

For the reasons stated above, it is respectfully submitted that any and all motions for severance and for separate trials be denied.

/s/ R. Tieken
R. Tieken
United States Attorney

38

UNITED STATES DISTRICT COURT
• • (Caption—No. 55 CR 679) • •

MEMORANDUM OF AUTHORITIES IN OPPOSITION TO MOTIONS OF SEVERANCE
(Filed Jan 30 1956)

I. The granting of a severance and separate trials for defendants jointly indicted rests in the sound discretion of the court and the refusal of a severance motion will not be error unless there is a clear abuse of discretion.

United States vs. Harris, 211 F. 2d 656, 659 (C.A. 7, 1954).

United States vs. Turner, 222 F. 2d 926, 932 (C.A. 4, 1955).

United States vs. Rosenblum, 176 F. 2d 321, 324 (C.A. 7, 1949).

United States vs. Antonelli Fireworks Co., 155 F. 631 (C.A. 2, 1946).

39 II. In exercising the discretion and in construing the applicable Federal Rules of Criminal Procedure,

the court should consider such factors as "simplicity in procedure, fairness in administration and the elimination of unjustifiable expense and delay."

Rule 2, Federal Rules of Criminal Procedure.

Cataneo vs. United States, 167 F. 2d 820, 822 (C.A. 4, 1948).

United States vs. American Stevedores, 16 F.R.D. 164, 169 (S.D. of N.Y., 1954).

III. Where the same acts and transactions are relied upon or form the basis for charges against several defendants, the court will ordinarily exercise its discretion, and be upheld in so doing, in denying a severance and in ordering a joint trial.

Rules 8 and 14, Federal Rules of Criminal Procedure.

United States vs. Turner, 222 F. 2d 926, 932.

Cantaneo vs. United States, 167 F. 2d 820, 822 (C.A. 4, 1948).

United States vs. Lebron, 222 F. 2d 531, 533 (C.A. 2, 1955).

United States vs. Manno, 118 F. Supp. 511, 514 (N.D. Ill., 1954) (and cases cited therein)

United States vs. Hall, 52 F. Supp. 796, 797 (D. Conn., 1943).

IV. The mere fact that hostility or antagonistic and inconsistent positions exist or may develop between defendants during the course of trial affords no basis of itself for a severance and separate trials.

Allen vs. United States, 202 F. 2d 329, 334 (D.C., 1952).

Dauer vs. United States, 189 F. 2d 343, 344 (C.A. 10, 1951).

/s/ R. Tieken
R. Tieken
United States Attorney

53

UNITED STATES DISTRICT COURT

* * * (Caption—No. 55 CR 679) * * *

REPLY OF JOSEPH T. MARZEC TO GOVERNMENT'S ANSWER TO HIS MOTION FOR A SEVERANCE.

(Filed Jan 23 1956)

Now comes Joseph T. Marzec, by Joseph A. Struett, his attorney, and states the following:

1. This defendant adopts paragraph 1, subparagraphs A and B of the Government's answer. As to sub-paragraph C of paragraph 1, it has always been the position of this defendant, Joseph T. Marzec, that he was a collector for the other defendants and that a substantial part of the funds received from said joint venture described in paragraph 2 of said answer were distributed by him to the other defendants herein.

2. That he has been informed and believes and so states the fact to be that all of the other defendants herein deny that there was any such joint venture between the parties hereto and further deny that they received any of said commissions from this defendaint. Obviously, if they did not, there was no joint venture and this defendant alone would be chargeable with the commissions or payments from said joint venture.

3. This defendant is also informed and believes
54 and so states the fact to be that all of the defendants herein appeared before the Grand Jury which returned this indictment and that the Grand Jury by the

return of the above indictment adopted the version of this defendant and not of the other defendants of this situation. Thus, it readily appears, as well known to the United States Attorney, that the interests of this defendant and the interests of the other defendants are antagonistic to each other since the distribution of these payments mostly in cash to the other defendants can only be established by and through the testimony of this defendant.

Thus, a severance should be granted. (United States v. Noble, 294 F. 691; United States v. Marchant, 12 Wheaton 480, 6 L. ed. 700; United States v. Ball, 163 U.S. 672, Rules 8, 13 and 14 of the Rules of Federal Criminal Procedure).

Joseph T. Marzec
By /s/ Joseph A. Struett,
Joseph A. Struett, his Attorney.
105 W. Madison Street
Chicago 2, Illinois
FRanklin 2-0665

State of Illinois } ss
County of Cook }

Joseph A. Struett, being first duly sworn, on oath deposes and says that he has read the foregoing reply subscribed by him on behalf of Joseph T. Marzec, the defendant herein; that he has represented Mr. Marzec for a period of two years, has had many conferences with the United States Attorney's office, and that the facts as set forth are as represented above.

/s/ Joseph Struett

Subscribed and sworn to before me
this 23rd day of January, A. D. 1956.
/s/ Marilynne M. Olsen
Notary Public

1

United States of America
Northern District of Illinois
Eastern Division

IN THE UNITED STATES DISTRICT COURT
• • (Caption—No. 55 CR 679) • •

TRANSCRIPT OF PROCEEDINGS
(Filed—Nov. 8, 1956)

had in the above-entitled cause before the Honorable John P. Barnes, Chief Judge of said Court, in his court room in the United States Court House at Chicago, Illinois, on January 23, 1956, beginning at 10:00 o'clock a. m. Appearances:

Hon. Robert Tieken, United States District Attorney (450 U. S. Court House, Chicago 4, Illinois), represented by

F. William Reeb, Esq., Assistant United States District Attorney, on behalf of the Government;

2 Messrs. Breen, Brumlik & Schaeffenegger, (209 South LaSalle St., Chicago 4, Ill.), represented by Edwin T. Breen, Esq., on behalf of the Defendant Frank A. Brandt;

Bernard H. Sokol, Esq., (231 South LaSalle St., Chicago 4, Ill.), on behalf of the Defendant Stanley T. Kusper;

Leo Klein, Esq., (10 South LaSalle St., Chicago 3, Ill.), on behalf of the Defendant Bruno L. Sobieraj;

Joseph A. Struett, Esq., (105 West Madison St., Chicago 2, Ill.), on behalf of the Defendant Joseph T. Marzec.

And thereupon the following proceedings were had herein:—

By the Clerk: No. 55 CR 679, United States of America vs. Frank A. Brandt, Stanley T. Kusper, Bruno L. Sobieraj, and Joseph T. Marzec. Defendants' motions for severance.

By the Court: I will hear you gentlemen.

3 How long will the matter take?

By Mr. Sokol: Not over five minutes.

By Mr. Struett: About ten minutes.

By Mr. Klein: Less than that, I think, your Honor.

By the Court: I will hear you, gentlemen. You will be first on the call.

(And thereupon the Court gave attention to other matters upon the call, after which the following further proceedings were had herein:—)

By the Clerk: No. 55 CR 679. United States of America vs. Frank A. Brandt, Stanley T. Kusper, Bruno L. Sobieraj, and Joseph T. Marzec. Hearing on defendants' motions for severance.

By the Court: Proceed, gentlemen.

I have read your papers.

By Mr. Struett: If your Honor please, I set up that the position of Mr. Marzec is antagonistic to the other defendants, a fact known by the United States Attorney as they filed their answer.

I just want to give your Honor brief quotations

4 from the Government's answer:

"1. Upon trial of the above-entitled cause, it is anticipated that the evidence will show that:

"A. During the taxable years 1949 and 1950, the defendants, Frank A. Brandt and Stanley T. Kusper, were officers of the Polish Roman Catholic Union of America, being respectively the Treasurer and

General Counsel of said organization. During the same years, the defendant, Joseph T. Marzec, was an employee of the organization, and the defendant, Bruno L. Sobieraj, was employed as an appraiser in real estate transactions.

"B. In connection with the application for and approval of certain real estate mortgage loans made by the Union during the said years, the defendants herein entered into a joint venture whereby payments, in addition to those customarily required by the Union on real estate loans, were required to be made to the defendant, Joseph T. Marzec, and were
5 in fact made to him by certain real estate brokers in order to obtain favorable action and approval on advantageous terms to said brokers of mortgage loans submitted to the Union."

It is in their answer that that is set forth, that this is a joint venture that they charge. And this is the Government's answer to my motion.

"C. In accordance with the understanding by and between the defendants, the defendant, Joseph T. Marzec, retained his share of the proceeds and distributed the balance collected from these transactions to the other defendants."

Now, my position is very simple, Judge. If they can establish a joint venture they must show a general agreement between the parties, and they must show distribution of those funds between the parties.

And they say that is the only basis of their claim, the non-reported income, as against all of them.

And I wish to reply to that in a verified answer that the only way possible they can show it is by and through the testimony of Mr. Marzec, since most of these
6 payments by him, as he claims, were made to the fund in cash.

And I also set up the other defendants' position which in substance is that they have had no joint venture and have received none of these payments.

I say under these facts, Judge, that the interests of Marzec as against the other defendants are antagonistic to each other, and there should be a severance in this case, either for the other defendants or for Mr. Marzec.

I just came in here, because I am going away, and I wanted to make our position clear to all the defendants and to the Government. And that is all I want to say.

There are some cases here—the cases are not too strong, your Honor; your Honor has got great discretion—it is a question of the Court's discretion.

It seems from the two cases I have found that where there is a real antagonism between certain defendants and other defendants a severance should be granted, particularly where the Government's case against the other defendants is dependent upon the version of one de-
7 fendant as against the other defendants. And they can't establish this joint venture on the facts as given to me without the testimony of Marzec as against these other defendants. And I have set that up in my reply.

And on that basis I say there should be a severance.

By Mr. Breen: If the Court please, my name is Edwin T. Breen, of Breen, Brumlik & Schaffenegger, representing one of the defendants, Frank A. Brandt.

His motion now is to sever counts 1 and 2, in which he is named, from the other six counts in which he is not named, or in the alternative to grant him a separate trial, and for an order on the Government to elect on which count or counts the Government shall proceed to trial.

And I wish to say for the clarity of the record, if your Honor pleases, that due to a typographical error,

oversight or otherwise, in the written motion presented to the Court where we ask for a severance of counts 1 and 2 from counts 4, 5, 6, 7 and 8, that count 3 was left out; and we ask to amend the motion in that regard wherever it appears.

By the Court: Very well.

By Mr. Breen: If the Court please, this indictment
8 consists of eight counts.

Counts 1 and 2 are the only counts in which the defendant Brandt, whom I represented, is named.

The substantive crime charged here against Brandt, and against all of the other defendants, is the filing of a false and fraudulent return for the respective years of 1949 and 1950.

Now, Brandt, as I say, is named only in counts 1 and 2.

The substantive crime is the filing of false and fraudulent returns.

If the Court please, under Rule 8 of the Federal Rules of Criminal Procedure, Subsection (b):

> "(b) Joinder of Defendants. Two or more defendants may be charged in the same indictment or information if they are alleged to have participated in the same act or transaction or in the same series of acts of transactions constituting an offense or offenses. Such defendants may be charged in one or more counts together or separately and all of the defendants need not be charged in each count."

9 Now, I call your Honor's attention to the fact that the offense charged in this indictment is the filing of the false and fraudulent returns.

Each count is separate and distinct unto itself.

It specifically charges the defendant Brandt and his wife with filing a false and fraudulent return for 1949—in count 1, and with filing a false and fraudulent return for 1950—in count 2.

Those are the offenses charged.

The indictment does not allege participation by the other three defendants in the filing of the false and fraudulent returns, which is the substantive crime charged.

There is no allegation of conspiracy here within the four corners of this indictment wherein it is alleged specifically or by inference that Brandt in conspiracy with the three other co-defendants, took any moneys.

There is no allegation in the indictment except that it says that Frank A. Brandt and his wife for 1949 and 1950 filed false and fraudulent returns; the indictment does not in any way say that he conspired with his wife and with the others.

10 So that the participation in an offense as covered by Rule 8 of the Federal Rules of Criminal Procedure does not state that they participated in a criminal act.

There is the color of the words "joint venture", which are confusing and misleading in this case, and looked at superficially and hurriedly lend some color of validity to the position of the Government that there might be some basis for a joinder in this case.

However, let us assume for the sake of argument that they did join in a joint venture. There is nothing illegal about a joint venture. If we would stop right there cold and say that they engaged in a joint venture there is nothing illegal. The crime charged is false and fraudulent returns.

And I contend, your Honor, and emphatically so, that under Rule 8 of the Federal Rules of Criminal Procedure covering criminal cases there is a misjoinder of parties here, and that Brandt on that point alone is entitled to a separate trial.

Now, if the Court please, there are also antagonistic defenses here. Marzec by his own pleading has stated

11 that he may be a Government witness, or his theory is going to be entirely different than ours.

He has contended by his own pleading, which appears in the files, that his position is antagonistic to ours. And his counsel just stated a few minutes ago that it is antagonistic.

And for that reason alone, your Honor, I further contend that that is a further serious reason for a severance in this case.

Further, we are informed and believe that certain other defendants may have introduced—the Government may introduce in evidence against them certain papers and documents which might incriminate them.

Now, in a joint trial, your Honor, where Brandt is sitting at the counsel table shoulder to shoulder with these other defendants, before a jury, naturally of laymen, sitting here listening to that evidence, it all goes into the same pot of evidence, they are liable to confuse the issues, and the incrimination of the defendant against whom it is used may be inferred and may be used by the jury against the defendant Brandt.

Further, your Honor, we anticipate and expect to
12 call as evidence—as witnesses in behalf of the defendant Brandt certain of the co-defendants.

Your Honor will please bear in mind that the charge here is filing false and fraudulent returns. And the Government contends that the sole source of the income which they allegedly failed to account for was derived from a joint venture.

Now, who would be in a better position to testify as to that joint venture, as to its existence or non-existence and the distribution of its proceeds if any such existed than the co-defendants?

There is an entirely different aspect as your Honor in his wisdom and long experience well knows between the

testimony of a man who is not a co-defendant and one who is.

In the event that Brandt is granted a separate trial in this case he is going to have the benefit of a witness on the stand who is not contaminated with an indictment hanging over his head, and is also a co-defendant in the case, where he testifies as a co-defendant and his motives can be impugned and questioned and his credibility
13 might be brought into question. So naturally, your Honor, it is much to the advantage of the defendant Brandt that he be given an opportunity in his own behalf to have a man who is not a co-defendant testify.

I contend that is another reason, your Honor.

A further reason, if the Court please, is this: We understand and believe that certain incriminating statements have been made by certain other co-defendants beside Brandt, made to Government agencies or to other witnesses. In the event of a joint trial these incriminating statements may be made from the witness stand, and naturally will seriously affect us. We don't know what those incriminating statements are. We are informed, however, and have reasonable grounds to believe that they were made.

We want an opportunity to meet those head on in a trial where we stand alone as the accused and not with others who are jointly accused, who might have made incriminating statements which would seriously affect our position.

Further, your Honor, the wives in this case are important people. Bear in mind that each defendant
14 and his respective wife joined in these—made these returns.

It is well within the knowledge and the province of the wives to know the source of the income and whether or not any money was derived from this alleged joint venture.

Who would be in a better position to know?

In a joint trial where Brandt is joined with the others I doubt, in fact I must almost state as a matter of fact that it would be impossible under the strict rules of evidence for the wife of another co-defendant to testify on Brandt's behalf.

Whereas if he stands separate and distinct in his own right free and clear of any contamination of possible guilt of other defendants, I maintain, your Honor, that under a certain construction of the rules of evidence the wife of a co-defendant would be able to testify.

The only advantage that I can see, your Honor, to a joint trial in this case would be the convenience of the Government and the saving of expense.

However, I respectfully maintain that that advantage is subordinate to the rights of the individual defend-
15 ants in this case who are faced with criminal prosecution, and who would not have the advantages guaranteed—I mean, would not have the extent of advantages guaranteed by the Constitution in the event of a separate trial.

In a joint trial, as your Honor well knows, much evidence is brought in that applies to only one defendant, but the jury, consisting of laymen sometimes misconstrue and misinterpret that evidence as applying to other defendants.

I very well appreciate and know the fact to be that the courts in their wisdom due to long experience attempt by proper instructions to delineate and define and distinguish between various channels of information and various kinds of information pertaining to certain defendants.

However, your Honor, that is not in my opinion as fair a trial as one man can have where he is standing alone on his own two feet without other co-defendants facing

him, where he would not have a chance in this case at bar to put on the stand the wife of one of the other co-defendants—which would be barred by the rules of evidence in the event of a joint trial, where he would not be stigmatized by the possible misinterpretation by the
16 jury of incriminating statements made by other defendants other than Brandt. And for other reasons, your Honor.

Now, if the Court please, we filed this morning with your Honor an unusual motion here, that I very well appreciate is seldom granted; that is, to inspect the Grand Jury minutes. I very well appreciate that it is seldom granted, and probably will not be granted in this case.

However, I respectfully suggest that the Court in considering its ruling on our motion, if the Court deems it necessary, inspect such Grand Jury minutes to determine whether or not the position taken by Marzec and the others is really inconsistent and antagonistic to us.

For the reasons stated, your Honor, I am asking that our motions be granted, namely, that Brandt be granted a separate trial; that counts 1 and 2 only in which he is named—he is not named in 4, 5, 6, 7 and 8—be severed from the other counts in which he is named, and that the Government be requested to elect and state to us on what counts they are proceeding.

Thank you.

17 By Mr. Sokol: If the Court please, my name is Bernard Sokol.

I represent Stanley Kusper, the general counsel of the Polish Roman Catholic Union.

I want to say for the record that my secretary is ill and has not had an opportunity to transcribe the motion for severance. I would like the Court consider this orally, and I will file in writing a motion.

My reaction to the indictment is this, that antagonism —I do not think mere antogonism between defendants would be sufficient unless there was some other reason why joinder would be prejudicial. And I think there is in this case.

Were the Government making the motion for severance and saying that because it contemplated the use of other defendants against Mr. Marzec we would have an entirely different situation. And even assuming that that were made—the Government has not yet made its position known—I would say there is on the face of the indictment —and if you add to it the few things which have been uttered in the Government's answer—there is a prejudicial misjoinder as a matter of law.

18 I would like to address myself to this. Supposing instead of using the words "joint venture", it were the Government's position, say, that Sobieraj, as a paid employee of the Polish Roman Catholic Union, had not listed his salary on his income tax return; and supposing Marzec similarly; and supposing Kusper similarly; and supposing Brandt similarly.

Could the Government with propriety say—or, let us say in any other case, four employees of Montgomery Ward & Company, who knew one another, did not file returns which were correct. Is a common source of income sufficient to join the plea in a case?

I do not think so.

The mere fact that moneys came to people, or are alleged to have come to people from a common source does not make them co-defendants.

And as Mr. Breen has pointed out, and as I would reiterate for emphasis, the joint venture charged is not a joint venture for the purpose of cheating on income taxes.

The indictment itself does not allege, and I do not think that the addendum furnished to the Court by the Government delineates or could form a part of the in-
19 dictment. I am giving this indictment as the Grand Jury found it.

As the Grand Jury found it, it says that a man named Sobieraj cheated on his income tax; that a man named Kusper cheated on his income tax; that a man named Marzec cheated on his income tax, and the other defendant.

Each man has a right to make his defense.

I have already entered the plea of Stanley Kusper as not guilty. We will so stand trial.

Stanley Kusper is still general counsel for the Union.

It is his position that he did not cheat on income taxes, that he declared all of his income. And he has testified before the Grand Jury, and I think rather thoroughly.

Now, when it is suggested that four people ought to be tried together, expediency itself is not a reason; convenience itself is not a reason.

And the matter of expense, in terms of whether, let us say, well, to try one will take one day, and to try four will take four days, actually, I don't think it is a matter of importance here.

If the Government could make a case against, let
20 us say, X—I won't single out any one of these defendants—against X, who is one of the defendants, if it could make its case against X that would depend on X's income tax return standing by itself, and what they would seek to show in terms of charging X with taxable income.

Now, as long as the Government does not allege that X and Y had any kind of relationship that would relate to an income tax relationship there is nothing common between them, even as appears from the indictment itself.

If we have four defendants, let us say you have A, B, C, D and E.

A, B and C have bad income tax returns. They just didn't declare. And here is little D sitting in the court room, and his position with the court is that he is not guilty also. And evidence comes in that moneys came to A, B and C—and that is what the indictment says. I am not saying that that is what the evidence will show, but the indictment says that moneys came to A, B, and C. And supposing that the proof is deficient as to D. D would have a right—if the Government failed to make a prima facie case he would have a right to have it stricken, to have the indictment dismissed at the close
21 of the Government's case.

If, however, there was merely the testimony of one party who testified against the others, I wonder whether according to the way these cases are construed any segregation could be possible.

Now, I am mindful of something. I sat in this court day in and day out; I represented a salesman in that television case which was tried here.

I tried my case in the District Attorney's office. I brought my client in and put him on the stand. We went through a virtual trial, and he was cross examined. And the Government found he was innocent.

Now, I say this, and I said this to the other men, that if you had sat in that court room with those nine or ten or twelve other fellows, and the jury heard somebody testify that this was so and that that was so you would have been hard put to take yourself out of this morass unless you had the collaboration of the Government. And the Government couldn't possibly give you aid because otherwise it would not have indicted you in the first place.

But the Government said, "We have found every-
22 thing you say is true." And they checked back and found out why the man had resigned shortly after he was employed by that company, which was true. And he

was dismissed. So I thank God that they gave me an opportunity virtually to try the case ahead of time.

I don't know truly, as innocent as that man was, and as innocent as the post office inspectors found him to be that he would not have been found guilty by that same jury.

Now, if Stanley Kusper, who is general counsel, has a right to make his defense it is on this basis: That I, as Stanley Kusper, filed a correct income tax return. Any moneys that I got I declared.

And he has a right to have that heard just exactly the way the Government alleged it.

I don't think all this discussion with respect to what may have taken place before the Grand Jury, or what the prosecutor has added, so to speak, to his indictment by way of addendum in explanation forms a part of the indictment.

On the face of the indictment there is a misjoinder. On the face of the indictment they are not joined. And the only thing that keeps them together is a stapling machine because the cases are not alleged to be the same.

And so I say that Stanley Kusper like every other single defendant in this case is entitled to a severance.

By Mr. Klein: If your Honor please, I represent one of the defendants here, Bruno L. Sobieraj.

He is charged in counts 5 and 6 with attempting to evade and defeat income taxes for 1949 and 1950.

Most of what I have to say has been gone over by counsel who have already mentioned the points to your Honor.

There are, however, a couple of things that I think have not been made clear, and I would like to elucidate upon them if I might do so.

In the first place, none of the four defendants in this case is alleged in this indictment to have participated in the same act or transaction which constitutes the offense charged.

None of the three other defendants are joined in this indictment as having committed the offense that is charged against the defendant Sobieraj.

They are not in that respect joint defendants.

24 It would be the same as if there were four separate indictments here, if the Court please, and they were asking to have the four consolidated for trial.

All of these counts—these two counts against my client, and two counts against each of the other three defendants, charge substantive offenses.

They are committed at different times.

They are independent of each other.

They are complete in themselves.

And they are not provable by the same evidence.

None of the offenses charged against the other three defendants are provable against my defendant that I represent.

It is true that they are all of the same general class in this respect, that they all charge a violation of the same statute, but the allegations, if the Court please, of each count are based upon separate distinct acts or transactions against different defendants, and no defendant as such—no two defendants as such are named together in any one count.

25 They are unconnected offenses.

There is no charge of conspiracy.

There is no charge of aiding and abetting.

There is no charge of agency.

A joint trial here would only tend to confuse the jury.

Evidence admitted as against some of the other defendants in their case would be heard by the jury, and while

it might not be admissible against the particular defendant whom it does not concern the jury could use it cumulatively and as a matter of corroboration where there really is in fact no corroboration.

The leading case, if the Court please, on this question of severance is McElroy vs. The United States, 164 United States Supreme Court, 76.

That was a consolidation, if the Court please, for trial of two indictments, against several defendants, for assault to kill with another indictment against only a part of them, or arson, committed on the same day; and with another indictment for all of them, for arson, committed two weeks later, when there was nothing to show conspiracy or to connect the transactions together.

And the Supreme Court held that indictments for
26 distinct offenses, distinct felonies such as we have in this case, not provable by the same evidence, and in no way and in no sense resulting from the same series of acts can not be consolidated for trial.

They reversed the conviction for improper consolidation of those indictments for different transactions, and they held that even though the record does not show that the defendants were not prejudiced or embarrassed in their defense that where it cannot be said that they may not have been embarrassed or prejudiced, that the attention of the jury may not have been distracted to their injury in passing upon the distinct and independent transactions the conviction would be reversed.

They also held that where there were substantive offenses such as we have in this case, separate and distinct and complete—and complete in themselves, and committed at different times, and not provable by the same evidence they should not be joined in one trial.

I feel, your Honor, that the only purpose—and it is admitted by the Government—the only purpose of the

allegation in this indictment of the so-called "joint venture" was to show a source of income, a source
27 of what they call "additional income" which was not returned by each individual defendant, the income that that particular defendant received—is alleged to have received—which has nothing to do with the actual offense committed, except as a source of income.

It is a matter of proof, if the Court please, and it does not make any connection between these defendants in the offense committed.

Now, if there was an allegation, if the Court please, that this so-called "joint venture" was for the purpose of having the defendants and the other parties to the "joint venture" agree, and perhaps for the sole purpose — for the purpose of filing a joint return which was in fraud of the Government, and accordingly if that joint venture was for the purpose of the defendant evading his income tax then we have a different proposition here. Then we have something material. Then there is some connection.

But there is nothing in this indictment, and there is nothing in this allegation because of the fact that this indictment can't come close to it.

The only thing that this "joint venture" attempts
28 to do is to say that it explains and shows the Government's theory on which this prosecution is based, that that was a source of income, which is no reason for joining these defendants in a joint trial.

By Mr. Reeb: If the Court please, the Government's position in this case is that the joinder is quite proper and that there will be no prejudice to any of the rights of the defendants in a joint trial in this case.

Further, there would be a great saving of time, and that the orderly administration of justice would be achieved by a joint trial in this case.

The various defense lawyers have pointed out here that there have been separate filings on the part of the various defendants. That is true.

In each case there was a joint filing with the wife of the respective defendant.

However, I think there has been some misunderstanding as to the nature of a tax case and the nature of the proof in a tax case. The crime is not the filing of a false and fraudulent return; the statute says that any person who wilfully attempts to evade and defeat the tax is guilty of a crime.

Of course, the Government in the indictment itself
29 has set forth that the attempt was by filing a false and fraudulent return.

However, in the reality of the general tax cases the filing of the tax return and the fact that it is the defendant's tax return is the simplest and less time-consuming part of the case. One witness in the course of half an hour or forty-five minutes can put in the tax returns. Those are the parts of the case which are separate and distinct. And so in any tax case. And this case is no different, as to whether there is additional income not reported; whether it was earned under such circumstances that the defendants knew that it was income, and should have reported it.

Now, it has been settled that the only "unifying core" of these cases—the phrase used in the Manno case, was the common income here. But there is really more than that. It is not just by reason of the common source here that the Government has joined these defendants. It is because the acts and the transactions giving rise to that common income will also show the intent of the defendants, the fact that they knew this was income, they knew they were receiving it, and they knew they participated in these acts and transactions.

I think that it is in a way perhaps immaterial as to whether this is income from a corporation, from a partnership, from a joint venture, or whatever you might call it.

The statute in a way says that if the same acts and transactions are involved that then there may be a joinder.

The same acts and transactions are involved here. They produced the income which was not reported. And that is going to be the litigated part of this case, not the part where the separate acts of filing are concerned, for we feel, and have reason to believe that that part probably will either be agreed to or stipulated, or at least the proof will be very simple.

All the Government's evidence in this case I would say is in a sense common to all four defendants.

And the evidence which the Government will produce here would consume, I would say, for an individual trial perhaps from a week to two weeks.

The same evidence, I would assume in a way, the same defendants, as they have indicated, would come in to aid one another by denying there was a joint venture, so that we would have a repetition of the same thing four
31 times.

I would like to state that I believe there has been a complete over-emphasis of the complexity of this case. And I would like also to state that I think the various attorneys here have underestimated the ability of a jury to understand the nature of it.

The case is not that complex. I base that on the fact that of course the Government knows the evidence that it is going to produce. I think with the various instructions and also because of the fact that there are separate and able counsel for each defendant that there would be

no difficulty in showing the picture here and separating the evidence where it needs to be separated against the four defendants.

I might further say, and I think I can say this without violating any of the secrecy of the Grand Jury, that I base the opinion that this can be presented quite simply on the fact that I think before the Grand Jury the situation was very easily seen and that it was easy to separate the evidence as between the various parties.

Now, there has been an allegation on information and belief that there is going to be a certain type of
32 evidence here that presented against one defendant properly, may improperly hurt the other defendants. I think there is going to be in a sense very little of that. As a matter of fact, some of the evidence, I would say, that would be presented in favor of one defendant might have the effect in a joint trial of somewhat helping the other defendants.

A further point has been raised here that on its face there has not been an allegation in the indictment which sufficiently connects the four defendants. I think, however, that is in a sense merely a procedural matter. In other words, if the Government had indicted these four individuals separately and had then moved for a consolidation I think under Rule 13 upon learning of the facts and the common evidence that the Court would have consolidated, or could have consolidated the various cases. And the fact that some of the defendants may feel that the Government's allegation is not correct in the indictment might technically lead to the granting of a severance under Rule 14. And I think under Rule 13 the indictment then being separate that the Court would have it in its discretion to then join them again because of the com-
33 mon nature of the evidence.

The Harris case, I submit, which is 211 F. 2d 656 well indicates that the matter of a joint trial and severance is not to be determined on the basis of technicalities, not on the basis of whether the cases are first consolidated and then there is a motion for severance, or whether there is a separate indictment and then there is a motion for consolidation.

I think that the cases which we have set out in our memorandum of authorities show that the key thing here is whether the acts and transactions underlies the whole case or matter to be litigated or as was pointed out in the Manno case, if the unifying core here is to be the same for all defendants and if they can be tried without prejudice to any of them and also with the saving of time not only to the Government but to the Court, we think that that should be done.

I would further like to say that this is not a new thing in tax cases, and it has received approval.

We have cited the Turner case. And in that case there was an indictment exactly of the type of indictment here presented.

34 I believe there were two partners in that case, and they were indicated on the basis of their individual tax returns. And there the Court either permitted them to stay consolidated, or consolidated them when they had been separately indicted in the first place. I don't think that makes too much difference. But in any event a joint trial was had. And it is the same situation we have here.

Furthermore, in the Manno case which was tried in this district in 1954 there were approximately four defendants. And in that case there was no allegation in the indictment that the partnership return, that the men had acted jointly to file a false partnership return, the indictment consisted as the indictment does here of separate counts against the individual partners.

The whole thing again resides of course in the exercise of discretion to determine whether in the setting of this case the defendants can have a fair trial. If the Government felt from the evidence that it had seen and heard in this case and the situation as it knows it that the defendants could not get a fair trial the Government would not have indicted them jointly in the first place.

And if the Government felt at this time that it was in
35 error the Government would certainly join in a motion for severance. However, we feel that the defendants can be tried jointly and that it can be done without prejudice to their rights.

Incidentally, on the evidentiary points—some of them that were raised—we have the question as to the wives and their testimony. I take it that the case which was cited by defense counsel is perhaps somewhat overruled by the Funk case in which case some of the wives of some of the defendants were permitted to testify. In fact, some of the evidentiary problems raised by defense counsel were not, I might say, supported by any case citation.

The Government therefore feels on the basis of the situation as it exists here that the defendants could all be tried fairly in a joint trial.

And we feel that the litigated matter again here is not going to be the filing of the returns, that the real issue here is the issue of the unreported income, showing that they did get additional income, and further that they got it under circumstances that they should have known or

they did know that it was income and that they
36 should have reported those transactions.

These acts and transactions more fully set out in the Government's answer to the motion for severance indicate that a series of real estate transactions was participated in by all. And as Mr. Struett has pointed out in his argument on the motion here this morning they

were mainly on the basis of cash transactions. These form the basis of the Government's position that the four should be tried together.

We feel also that the Cataneo case which we have cited which deals with two false statements being filed also supports the Government's position. There there were two false statements filed, both of which constituted separate offenses. And I think there was one different defendant involved in the two indictments. They were tried together, in the Cataneo case, in the Fourth Circuit, not because there were separate filings of the affidavits, they were tried together because the same evidence which determined whether they were false related to the draft deferment of this person, and that evidence was common to the defendants.

And the Government through its knowledge of the case and through the knowledge of the evidence which it
37 intends to present feels that it can give a fair and orderly trial to each and all of these defendants.

We feel that they were properly joined in this indictment. And if the argument is that we did not allege it sufficiently clear in the indictment, if that is the argument, we contend that that is just procedural, that after all if they were separated into four indictments, that under Rule 13 again they could be joined if the Court felt it was in the interests of justice to consolidate them all for trial.

We respectfully move the Court to exercise its discretion and grant a joint trial.

By the Court: Anything further?

By Mr. Struett: I just want to say this, your Honor, by way of answer:

If they are going to show a joint venture here, and a receipt of money by these other defendants than I think

I can say it sincerely, because I have worked on this matter for two years, they have got to do it through the mouth of Joe Marzec, one of these defendants.

Now certainly in fairness to everybody that is an antagonistic position and there should be a severance in
38 this case.

That is all I am going to say.

By Mr. Reeb: Your Honor, may I say a word as to the antagonistic position?

By the Court: Yes.

By Mr. Reeb: There may be an antagonistic position here. The Government is not denying that there may be an antagonistic position here. I think I pointed that out last week, and it is also pointed out in the Government's answer, where the entire situation is such that these brokers who will be the principal witnesses—and I think there is no secret about that—will indicate that they made certain payments, almost completely in cash to the defendant Marzec. And again there is no secret about that.

The Government's evidence as to the other defendants does not rest completely in the testimony of Marzec. There is other circumstantial evidence and some direct evidence.

However, the Government has reason to believe that perhaps the defendant Marzec will want to testify for the Government during the course of the trial. If he does not choose to do so, that is his problem.

39 I might cite one case in that regard where a similar situation came up, and I believe it was before your Honor, in the United States *v.* Beck, where a defendant entered a plea of not guilty, and then requested to testify for the Government.

In that case there was an additional factor which we shall never have here, and that is the fact as it appears that perhaps there was a claim that some of the defendants did not know that the other defendant had interests antagonistic to theirs and was going to do that.

There is the possibility, there is a strong chance that he will ask to testify for the Government in this matter. But as far as antagonism goes we do not believe that in itself is basis enough for a severance here, because all the evidence of these transactions is going to be common to the defendants, and I think the jury will see the matter quite clearly. And again I say I base that in part on the experience before the Grand Jury where the evidence could very clearly be sorted out as against each defendant, and it was an easy matter I would say to do that.

By Mr. Sokol: If your Honor will forgive me for speaking again, if there were not so much emphasis on this fellow Marzec I would feel content and feel that I had said my say—

By the Court: I am going to be more inclined to forgive myself for listening to any more!

By Mr. Sokol: Very well. Then I won't say any more. But it occurs to me that there is an unusual emphasis on Marzec's position as a potential witness for the Government as against these other defendants. But I think that antagonism always comes out of criminal cases. And the fact that Marzec might be antagonistic to my client doesn't bother me. If he is, he is. Somebody is always testifying against somebody else. And if he isn't somebody else presumably will be produced by the Government because they say they can make a case.

It is my position in behalf of Stanley Kusper that the crime is a question of whether Stanley Kusper included in his return whatever he got, whether it came from Joe Marzec or whether it came from Timbuctoo. He says he did. Stanley Kusper said, "I declared all my income in my income tax return, and I shouldn't have to worry about what Brandt did or Sobieraj did or Marzec did.

41 I did the right thing."

Now again, can that be properly heard under the circumstances where there has been so much emphasis placed upon whether Marzec is or is not going to testify?

By the Court: The indictment in this case which was filed in this court on the 15th of December, 1955, names four defendants:

Frank A. Brandt
Stanley T. Kusper
Bruno L. Sobieraj, and
Joseph T. Marzec.

The first two counts run against the defendant Brandt.

The third and fourth counts run against the defendant Kusper.

The fifth and sixth counts run against the defendant Sobieraj.

And the seventh and eighth counts run against the defendant Marzec.

Four of the counts relate to alleged attempts to defeat income tax for the calendar year 1949.

Four of the counts relate to attempts, alleged attempts to avoid and defeat income tax payments for the
42 year 1950.

That is, each of the four defendants are charged with having attempted to evade and defeat taxes for the years 1949 and 1950.

Each one of the counts contains language substantially as follows:

"whereas, as he then and there well knew he received during the said calendar year additional income, consisting of his share of the proceeds from a

joint venture, conducted by and between Stanley T. Kusper, Bruno L. Sobieraj, and Joseph T. Marzec, and himself, and that the joint net income for himself and his wife for the said calendar year was, in fact, the sum of $33,972.70, upon which said net income there was owing to the United States of American income tax of $9,452.00; in violation of 26 U.S.C., Section 145(b)."

As I say, that allegation substantially is in each one of the eight counts.

I cannot see why these four defendants cannot have a fair trial before a jury. Jurors are much more intelligent than they are many times said to be. I cannot
43 see any reason at all why these four defendants cannot have a fair trial before such juries as we have here.

Accordingly the motions for severance and for separate trials will be overruled and denied.

By Mr. Reeb: Your Honor, at this time I think there are several other things that were set for today. First, the arraignment and plea as to three of the defendants and I believe the defendant Kusper—I think it was set out in the order.

By Mr. Sokol: Could I be heard on something?

By the Court: February 20th, arraignment and plea continued to that time.

By Mr. Struett: Your Honor, I won't be in the city at that time.

By the Court: You can send somebody.

By Mr. Sokol: I have a motion for a bill of particulars.

By the Court: February 20th.

By Mr. Reeb: Mr. Struett indicates that he might be leaving and not return until a certain date.

By the Court: He will have somebody here.

By Mr. Struett: I will have somebody here, and

I will be back on May 2nd.
By the Court: February 20th at 10:00 o'clock.

United States of America
Northern District of Illinois
Eastern Division

IN THE UNITED STATES DISTRICT COURT
• • (Caption—No. 55 CR 679) • •

CERTIFICATE

I hereby certify that the above and foregoing transcript comprising pages numbered consecutively from 1 to 44 is a full, true and accurate transcript of my original shorthand notes of the proceedings had in the above-entitled cause on January 23, 1956, before the Honorable John P. Barnes, Chief Judge of said Court.

/s/ Roy E. Fuller
Roy E. Fuller
Official Court Reporter
United States District Court
Northern District of Illinois

April 6, 1956

1

IN THE UNITED STATES DISTRICT COURT.
• • (Caption—No. 55 CR 679) • •

TRANSCRIPT OF PROCEEDINGS
(Filed Nov 8, 1956)

had in the above-entitled cause before the Honorable John P. Barnes, Chief Judge of said Court, in his court room in the United States Court House at Chicago, Illinois, on February 20, 1956, beginning at 10:00 o'clock a. m.

Appearances:

Hon. Robert Tieken, United States Attorney, (450 U. S. Court House, Chicago 4, Ill.), represented by

F. William Reeb, Esq., Assistant United States District Attorney,

on behalf of the Government;

2 Messrs. Breen, Brumlik & Schaffenegger, (209 South LaSalle St., Chicago 4, Ill.), represented by Edwin T. Breen, Esq., and John V. Schaffenegger, Esq.,

on behalf of the Defendant
Frank A. Brandt;

Bernard H. Sokol, Esq., (231 South LaSalle St., Chicago 4, Ill.),

on behalf of the Defendant
Stanley T. Kusper;

Leo Klein, Esq., (10 South Lasalle St., Chicago 3, Ill.),

on behalf of the Defendant
Bruno L. Sobieraj;

Joseph A. Struett, Esq., (105 West Madison St., Chicago 2, Ill.), Represented by Richard L. Phelan, Esq.,

on behalf of the Defendant
Joseph T. Marzec.

And thereupon the following proceedings were had herein:—

By The Clerk: No. 55 CR 679, United States of America vs. Frank A. Brandt, Stanley T. Kusper, Bruno L. Sobieraj, and Joseph T. Marzec.

For arraignment and pleas, and to set for trial; Defendants' motion for Bill of Particulars; De-
3 fendants' motion under Rule 16 for discovery and inspection of documents and papers obtained by the Government by virtue of process;

Defendants' motion under Rule 17 (c) for production of documents and papers in possession of the Government; and

Government's motion to quash subpoenas duce tecum issued under Rule 17(c).

By The Court: How long will this matter take?

By Mr. Schaffenegger: Your Honor, on behalf of the defendant Frank A. Brandt, I imagine it will take about fifteen minutes for the argument on his part.

By Mr. Klein: It will take only a short time to argue my motion, if the Court please.

By Mr. Sokol: I will need a couple of minutes.

There was a bill of particulars filed by the United States, but I would like to have some more information.

By The Court: You will be first on the call.

(And thereupon the Court gave attention to other matters upon the call, after which the following further proceedings were had herein:—)

By The Clerk: No. 55 CR 679, United States of
4 America vs. Frank A. Brandt, Stanley T. Kusper, Bruno L. Sobieraj, and Joseph T. Marzec.

For arraignment and pleas, and to set for trial;

Defendants' motion for Bill of particulars;

Defendants' motion under Rule 16 for discovery and inspection of documents and papers obtained by the Government by virtue of process;

Defendants' motion under Rule 17(c) for production of documents and papers in possession of the Government; and

Government's motion to quash subpoenas duces tecum issued under Rule 17(c).

By Mr. Sokol: If the Court please, I represent Stanley T. Kusper, the defendant named in Counts 3 and 4.

My motion for a bill of particulars I believe was the briefest, because I ask but for two things.

If the Court will recall, the indictment charges Stanley T. Kusper, in Counts 3 and 4, and alleges, as is customary, what was stated in his income tax return for himself and his wife, and then say that "he then and there well knew he received during the said calendar year additional income, consisting of his share of the proceeds from a joint venture, conducted by and between Frank A. Brandt, Bruno L. Sobieraj, and Joseph T. Marzec, and himself, and that the joint net income for himself and his wife for the said calendar year was, in fact, the sum of $26,281.99,"

instead of approximately $14,000.00.

And Count 4 is similar in language.

In my motion for a bill of particulars I ask:

"state whether the plaintiff charges fraud based upon omissions of data from the tax return in question, which the defendant was legally bound to report and, if so, describe each such omission.

"As to such count, state the nature of the joint venture alleged and whether such joint venture de-
6 rived from a single transaction or numerous transactions. State the nature thereof with particularity."

Since there was extended argument in connection with the motion for severance which bears on my motion, I would like to refer to this fact.

Stanley T. Kusper was general counsel for the Polish Roman Catholic Union. He testified before the same Grand Jury which heard this matter.

He has denied being a part of a "joint venture".

And the Court heard some substantial discussion from Mr. Breen and Mr. Klein, and also from Mr. Reeb in connection with what the Government expected to prove with relation to the so-called "joint venture".

Mr. Kusper has already entered his plea of not guilty.

It is his position that he didn't get any such income; that any income which he received directly or indirectly from or through the Polish Roman Catholic Union was correctly reported on his return.

One of the vices in the indictment is that defendants are at a disadvantage to know on what basis the
7 Government computes the amounts. The Government alleges that Mr. Kusper's income for the year 1950 was $26,281.99 instead of $13,785.99.

Now, we are anxious to try this case; we are ready and delighted to try it whenever the Government is ready.

However, in order for me to be ready there are certain things that I must have. I must know what the Government has allocated to my client, since my client says, "Yes, I did get income from the Union, and I correctly reported it on my return", so I am completely at a disadvantage.

I don't have access to that something which my client would not know about, so I am asking the Government to itemize the specific amounts that they allege make up the figures for the $26,281.99, in Count 3, and in Count 4, $18,507.37.

That should not be difficult. It certainly should be a matter of easy computation because after all it is apparently part of a total of some specific items which they propose to prove. And I cannot possibly prepare unless I get those specific items.

I have asked other than that that the Government allege the nature of the "joint venture", and whether such "joint venture" deprived from a single transaction or
8 from numerous transactions.

From the nature of the bill of particulars which the Government filed I would presume that their answer is that there were numerous transactions that they propose to set up. And what we want from them are the names of the parties involved and the amounts they say went to Kusper.

My motion can be easily accommodated.

By Mr. Klein: If the Court please, I am in much the same situation as the attorney for the defendant Kusper.

My motion is directed to only one matter, and that is the items of this additional income, as and when they were received in this case.

And as was stated by the preceding counsel there is a total amount only put in there. We have no way of determining that. We don't know how the Government is going to show that. And unless we know what the different items are and when they were received we are not prepared, we cannot be prepared to defend.

We are not asking for evidence. We are asking for the different items that make up that total in the two amounts that Sobieraj was supposed to have received.

It is a simple matter, and after all it is something that there cannot be any question that we are entitled to have it. We are not asking anything about the other matters that other counsel have brought up. We are not concerned with that.

By Mr. Schaffenegger: If the Court please, my name is John B. Schaffenegger. I am of the firm of Breen, Brumlik & Schaffenegger.

We represent one of the defendants in this case, Mr. Frank A. Brandt.

We have filed separate motions here.

And we have filed memorandums of law.

And the United States Attorney has also filed memorandums of law.

Our motions consist of:

First, a motion for a bill of particulars;

A motion under Rule 16 for any documents or papers that have been detained or obtained by the Government by virtue of process;

And a motion under Rule 17(c) where we ask for any documents and papers that the Government has in its possession.

Your Honor, our demands for particulars are extensive, consisting of nineteen demands, which can be brought down to six separate propositions which we believe are necessary for Mr. Brandt to defend himself in this cause.

This indictment, your Honor, in revenue law has been described or designated as a skeleton indictment.

It says that Mr. Brandt and Mrs. Brandt jointly in the years 1949 and 1950 filed income tax returns setting forth a certain net income, and setting forth the tax thereon, and then says that in truth and in fact the net income was an amount in excess of the amount that they reported, and that the tax should have been a greater amount.

They also allege a joint venture, in the indictment.

Now, your Honor, our demands are directed in the following directions:

No. 1. This joint venture that is alleged in the indictment is merely a conclusion on the part of the Government.

A joint venture, under the Internal Revenue Code and under the laws of the State of Illinois has a certain legal significance. We respectfully submit, your Honor, that in order for the defendant Mr. Brandt to defend himself in this trial, in order that he should not be taken by sur-
11 prise, in order that he may bring the facts in this matter before the Court and the jury he has a right to know what this "joint venture" is, and he has a right to know how it was comprised. He has a right to know its properties. He has a right to know its management. And most particularly, your Honor, he has a right to know what part he played in this particular "joint venture".

He should have a right to know, secondly, the part that the other co-defendants — the co-defendants that will be tried before the Court during this trial—what part they played in this particular "joint venture", and what it is and what it comprises, and how the resulting income was derived therefrom.

And he should have a right to know, your Honor, relative to the computations—he is charged, if the Court please, with not reporting an income tax of $18,440.00 during the year 1949, and with not reporting an income of $16,395.00 during the year 1950. And he should have a right to know how the Government arrived at that particular sum.

He should have a right to know, your Honor, how the money that he is alleged to have not reported from this "joint venture", by whom it was put into this "joint venture".

12 And we have also requested, your Honor—and the Government has admitted they don't have the documents—the documents, if any, establishing the "joint venture", and the documents, if any, establishing that Mr. Brandt failed to report certain income.

Now, your Honor, the Government has supplied certain information in this case. They have filed a memorandum, and in that memorandum they say that they adopt that as a part of the answers, or the answer to the parts that we have demanded.

And they say that this "joint venture" consisted of the four defendants.

That Mr. Brandt—and I only refer to him—that he was the treasurer of an organization known as the Polish Roman Catholic Union.

They have set forth one matter of some 88 real estate transactions in connection with which they have set forth certain tabulations after their names.

For instance, they set forth that there were some 88 real estate transactions in the year 1950, and 75 in the year 1949.

13 And they have set forth, your Honor, certain of the names and amounts of money—the sum of $73,150.00 in the year 1949, and the sum of $107,105.50 in the year 1950.

That is the information they have supplied at this particular time, provided that we refer, your Honor, to the answer by the Government upon the motions for severance.

And the Government takes this position, that we have been given full and complete particulars, that we are not entitled to any additional information under the law.

And the grounds they state are four.

One, the Government holds that they have divulged the theory upon which they are bound to proceed, and the

source of the additional income. And they say by doing that—and they cite cases—that they have sufficiently complied with any demand for particulars.

Secondly, they say that when we ask for computations, that in the past cases have revealed that defendants have been unsuccessful in obtaining computations because in doing so the United States of America is divulging its evidence prior to trial.

They say that they should not give us particulars
14 because they have listed the names of eight real estate brokers with these tabulations and that that should be sufficient; and for that reason the Court strike down our demands for particulars.

By the Court: Where is that statement that was filed? Where is that statement?

By Mr. Reeb: This is it. There was a copy filed. Here is the copy in our files. I think that is the one to which he refers.

By Mr. Schaffenegger: On the motion for severance.

By Mr. Reeb: Right at the top, in that paragraph.

By Mr. Schaffenegger: In their answer they filed a list of real estate brokers, and in that same answer—

By the Court: "Government's answer to motions for severance". I see it.

By Mr. Schaffenegger: No, your Honor, there are two of them.

They filed "Answer to motions for bill of particulars", and in it they set forth these paragraphs that evidently the Court is looking for.

I have it right here. Maybe the Court can see it
15 (indicating).

By the Court: I want to find it in the file.

By Mr. Schaffenegger: It is in that "Answer to motions for bill of particulars", and it was filed last Monday.

By Mr. Reeb: Last Monday, I think that is correct.

By Mr. Schaffenegger: Yes, your Honor, filed February 13th.

By the Court: I find here "Memorandum of authorities."

By Mr. Schaffenegger: They filed two or three memorandums of authorities.

By the Court: "Memorandum of authorities in opposition to motions for bill of particulars".

By Mr. Reeb: The page in front of that should be "Answer to motion for bill of particulars."

By the Court: I have "Motion for bill of particulars" and "Memorandum of authorities in support".

By Mr. Schaffenegger: That is right.

By the Court: "Memorandum of authorities in opposition to motions for bill of particulars".

As far as I can see there are just two pages. I don't see any more.

16 By Mr. Schaffenegger: Maybe they failed to file their answer.

I have a copy of it.

By Mr. Reeb: There was an answer filed, your Honor. I took it down to the Clerk's office myself.

If your Honor would care to look at the copy in the file—

By the Court: I want the original. It is not here.

By Mr. Schaffenegger: We will send down for it.

By the Court: I want to see it. I want to see what the record is.

By Mr. Schaffenegger: Very well.

By the Court: Go ahead.

By Mr. Schaffenegger: Finally, your Honor, in the answer of the Government and the memorandums that they cite in support thereof they contend that since they haven't any books and documents in their possession to substantiate this indictment that the motions for bill of particulars should be denied.

Your Honor, the important thing that they submit to the Court is that they feel that where they tell the defendants what the theory of the Government is, and
17 when they develop that phrase, that no bill of particulars should be allowed.

The theory in this case—and it becomes very important—the theory is, unreported income.

This is not, if your Honor please, a case where the Government is proceeding on the theory of net worth, where they take the expenditures of a particular defendant and show that it was far more than the defendant's income, and that he has violated the law in failing to report it.

By the Court: I would like to see the docket, and the documents and what the files say the other income is.

Go ahead.

By Mr. Schaffenegger: The Government says that when they merely say that this additional unreported income was derived from a "joint venture" that that should be sufficient.

In our memorandum we have cited cases—and I won't burden the Court with a lot of citations, but really refer to the cases submitted by the Government, and the cases that we urge for consideration by the Court.

In United States vs. Singer, one of the cases that we rely on, which was determined by the Circuit Court
18 of Appeals in the Third Circuit, we have exactly a situation such as this. We have a case where the theory is unreported income on the part of the defendant. We have a case where it was alleged that this unreported income was received and obtained from a partnership.

And there the court said that when the theory is unreported income the defendant should have a right to know how that sum of money that the Government sets up and charges the defendant with failing to report, is made up,

and when they say it comes from a partnership he has a right to know how it came from that partnership.

In that Singer case the partnership was Chelsea Beverage Company, and the court said the defendant should have a right to know whether he is being held accountable for the net income or the gross income of the partnership, whether he is being held accountable for all the income of the partnership or some fractional part thereof, that he had a right to know how the Government computed the amounts of money that it is charging the defendant with failing to report.

And we say this, your Honor, that that situation parallels almost exactly the situation we have before the bar.

The government cites United States vs. Caserta, wherein the Singer case was taken under consideration, where the applications for particulars were denied. And the reason was there the theory was net worth, and the court felt it would be a hardship for the Government to tell the defendant what the figures were because the theory was entirely different than the theory at bar where we have unreported income charged on the part of the defendant.

And again, United States vs. Chapman, which was a net worth case. And there the Court in its opinion said that where you have a contention as to the source of the income the defendant should be entitled to the information with respect to the source of the income.

Your Honor, we have investigated and researched the law relative to the matter. We have found cases decided as late as 1954. And we have referred to them in our memorandum:

United States vs. King
United States vs. McKenna
United States vs. Profaci

United States vs. Peelle

20 United States vs. Witbeck

And in all those cases the theory without exception was unreported income, and particulars were allowed.

In that one case the Government was ordered to list the omitted items, the amounts of each item, the names of the payers and payee, and the date of payment.

And in the Peelle case and in the Witbeck case it was the same skeleton indictment as we have in the case at bar.

Now, the Government says that, "if we divulge our computations we are divulging our evidence." And they say that in the past the courts have ruled that the divulging of computations has ben denied.

And there again they refer to a net worth case, and rely on it: Remmer vs. The United States.

And as additional authority they cite Pines vs. United States, which involved the transportation of false securities.

And they cite Stumbo vs. The United States, and that case involves the use of the mails to defraud.

And United States vs. Brown. That was an income tax tax case. The charge was conspiracy on the part of several defendants to evade the payment of taxes.

21 We would prefer, your Honor, to follow the language of United States vs. King, where the court said,

"Income tax evasion cases are a special breed of their own."

And that a defendant charged with unreported income is entitled to some information so that he can prepare to defend himself in advance of the trial.

And the Court went on to say that to refuse to give that information to a defendant would make Rule 7(f) mere surplusage, "and would allow an 'iron curtain' to drop between a skeleton indictment and the defendant thereby charged."

And in United States vs. Farrington, where the indictment was the same as the one here, in an income tax case the court ruled that the Government should furnish the defendant with a bill of particulars showing how the computations for incomes for the three years alleged in the indictment were arrived at.

Your Honor, they say that when they give us the names of the real estate brokers, that they have satisfied any demand for particulars, and that should be sufficient.

By the Court: They state what?

By Mr. Schaffenegger: They say that has satisfied any demand for particulars, that is that we should be satisfied with that and that they do not have to give us any more.

By the Court: Go ahead.

Anything else?

By Mr. Schaffenegger: Yes, your Honor.

Now, your Honor, relative to the computations and the information that they have submitted, Mr. Brandt is charged with having unreported income of $18,440.00 in the year 1949, and $16,395.00 in the year 1950.

We find that information by taking the amount which it is alleged that he reported and the amount they say he should have reported. And that is all there is.

They give us the names of eight brokers. And they lump them into amounts going up to $73,000.00 for the year 1949, where Mr. Brandt is alleged to have not reported $18,000.00; and for the year 1950 they go up to $107,000.00. And for that year he is alleged to have reported even less than for the year 1949.

23 We have taken these figures and divided them by four. And we have taken these figures up and applied them to our client, and we have applied them to other clients, and we can't make them out; that is, we don't know on what basis the Government has made these

computations. We don't know where this money was derived, nor when it was paid nor in what amounts.

We respectfully submit that in every case cited by the Government where they refused these computations that they are cases that are based on the net worth theory, not the unreported income theory, and that we are entitled to the information so that we can prepare fairly and honestly to defend ourselves.

And the fourth reason they resist our motion, they say "We do not have any documents, and because we do not have any documents or records we do not have to answer with particulars."

And they cite the Skidmore case in that respect. In the Skidmore case the books and records were in the possession of the defendant. And the Government knew that the defendant knew that the Government used those records. And in that instance particulars were denied.

24 But we say that the failure to have documents on the part of the Government is never, never an answer to a refusal to supply the particulars demanded under Rule 7(f) in the Federal Rules of Criminal Procedure.

And we respectfully submit, your Honor, that the very reason they give for resisting our demands must fall by virtue of the cases, that they have completely forgotten that they are proceeding on an unreported income theory, that they are not proceeding on a net worth theory; that they are merely concluding that there is a "joint venture", they are not telling us who it was comprised of.

The mere fact that they say that Brandt was the treasurer of the Polish Roman Catholic Union does not make him any part of a "joint venture".

And the Government knows better than we that a "joint venture" has a particular technical significance in the eyes of the law.

We respectfully submit, your Honor, that our demands are not unreasonable, that we should have these answers. That if we don't get this information, during the course of this trial where we have the number of eighty-eight real estate transactions in one year and seventy-five real estate transactions in another, as appears even now, that the trial will be constantly interrupted and as far as Mr. Brandt is concerned he will be taken by surprise in his defense.

We respectfully submit, your Honor, that we are entitled to the information that we ask for under Rule 7(f) of the Federal Rules of Criminal Procedure.

Your Honor, on our motion under Rule 16, whereby a defendant has a right to request the production of documents and papers for inspection that the Government has obtained or detained by process we say that the Government has capitulated, and have said, "We don't have any papers." And of course, we are satisfied with that answer.

Under Rule 17 we run into some difficulty. We presume they must have some papers and documents in their possession in that instance because they do resist that motion most vigorously.

Under Rule 17(c), your Honor, as we understand the rule it is not a discovery provision. We are satisfied with that.

We are entitled, however, to such discovery that we could have had under Rule 16. It does not preclude a defendant from getting certain information. And the very purpose, if it is not discovered—and we admit that, your Honor—is to expedite the trial.

And that we are most anxious to do, because we don't want to be surprised. We want to be prepared, your Honor. We want to defend Mr. Brandt's rights to the best of our humble ability.

And your Honor, we proceed in this way in an attempt to comply with Rule 17(c).

We made the motion before the Court, and we filed the motion, and we prepared subpoenas duces tecum that were personally served on the United States Attorney and on the Assistant Director of Internal Revenue. And we made those subpoenas returnable for this afternoon, well knowing that the Court can change, modify or strike down the subpoenas. We wanted to comply with the rule in every possible respect.

The Government filed their answer and motion to quash the subpoenas. And we have filed memorandums on both sides, setting forth both sides of this matter.

Our subpoenas, your Honor, provide as follows:

27 We ask the Government to bring into court so that we can inspect and examine certain papers and documents that were obtained—with certain limitations and exceptions; we don't want the papers that they have that are narrative statements that they have received through interviews, or that they have prepared themselves in getting ready for trial; and we don't want any memorandums that they have in their files.

We just want the papers, your Honor, that they obtained in the course of the February 1955 Grand Jury investigation; we only want those papers and documents that they have obtained in the course of their investigation provided those papers were used before the Grand Jury, and provided they are admissible in evidence.

And then, your Honor, we ask for statements that they have in their possession that were made, if they were made, by any of the co-defendants in this trial.

And your Honor, in doing that we cite the Bowman Dairy case—and I know that the Court is himself familiar with that case. The Government charges, but I don't think they mean that, that we have gone beyond the

limitations of the Bowman Dairy case. We have followed it very closely, and we have watched the law applicable to it, and the Government cannot point out where we have asked for more than was demanded in the Bowman Dairy case, except as to the statements of co-defendants.

Their objections to this subpoena duces tecum and the basis for their motion to strike it down are that the language is too broad. That is No. 1.

No. 2. That we have not supported our motion with an affidavit.

No. 3, that by asking for statements of the co-defendants our entire subpoena is actually defective and we are not entitled to the statements of the co-defendants.

Your Honor, for that purpose they cite, Shores vs. Brown, where Rule 17(c) is not even cited; and they cite United States vs. Brown, the determination of which was by your learned colleague on the bench, Judge Campbell, who ruled in that case that the defendants could have information such as we are seeking, except the statements of witnesses. And that, of course, is the exact and
29 correct interpretation of the law.

Then they cite United States vs. Carter, a case decided by Judge Holtzoff, in the District of Columbia, where there the Judge said, "You cannot have statements of witnesses but it seems both sensible and fair to direct the United States Attorney on application of defense counsel to permit the latter to inspect prior to the trial any written statement signed by the defendants in the case".

They say our language is too broad. We followed the Bowman Dairy case, and we followed many of the citations set forth therein.

They have books, documents and papers that come within this Rule itself which were used upon the Grand

Jury investigation, or in preparation for trial and will be used as evidence. And we, in good conscience, Judge, should have an opportunity to see them before we go to trial so we can expedite the course of the trial.

They complain that we have not supported our motion with an affidavit. And they cite United States vs. Iozia, a case decided by Judge Weinfeld, of the District Court of New York. There he recognized that any material
30 in the possession of the Government that has been used before the Grand Jury or could be used upon the trial is within the reach of process of a defendant. And the court there, your Honor, felt that the necessity for an affidavit should be read into Rule 17(c), though he admits that it is not stated therein but that it should be the same as Rule 16 and that good cause should be shown in that particular instance. And, your Honor, that is the only decision upon that particular point where you need an affidavit, in that particular instance, if the Court please.

In the Bowman Dairy case it is not divulged whether or not it was supported by such an affidavit.

In the case that the Government relies on, United States vs. Carter, it is specifically stated that it was not supported with an affidavit.

But, your Honor, finally in order to satisfy the cases in their technical demands, in our answer we have supplied an affidavit, after we received their objection; and so as far as the record is concerned even though Rule 17(c) does not provide the necessity of showing good cause we have complied with the technical demands of the cases.

And we filed an answer to the Government's motion to quash, and then we filed an affidavit with that, and
31 it is with that pleading. And we served it on the United States Attorney, and we also served it on the Clerk.

If the answer to the Government's motion to quash can be looked at it will be found attached to it.

In our affidavit we met the requirements of the Government where in their answer they say that we did not comply with those demands and also the requirements of Judge Weinfeld where he said those things should be done.

We respectfully submit that the rule does not require such an affidavit, but we have supplied one.

Now, finally, your Honor, without imposing on the patience of the Court, the Government raises an objection to the subpoena duces tecum that it is too broad, that they should be stricken because we ask for the statements of co-defendants.

Your Honor, in this particular instance we believe the Government has again become confused in complaining that we are asking for the statements of witnesses.

We cite United States *vs.* Gordon—and I appreciate, your Honor, that that case does not apply to this
32 situation. There the Court held that on the cross examination of a witness when the witness is on the witness stand that if there are certain statements and the proper foundation is laid that this statement in the hands of the Government could and would be required by the defense. But that is not this situation at bar.

The Government cites the case of the United States *vs.* Lightfoot where it was an action under the "membership" clause of Section 2 of the Smith Act where on cross examination there was a demand to get the FBI report, made to the FBI by by the witness Bozek. And the Circuit Court of Appeals said that it was not necessary to provide that, and cited an unusual case—this is the United States vs. Bookie, a narcotics case, where the defense had a police officer on the stand by the name of

Sims, and wanted the report that he made to his police superior. And the Court ruled that the Government did not have to turn that over to defense counsel.

And then they cite United States *vs.* Roviaro, a narcotics case, where the report of the narcotics investigator through his supervisor was requested on cross examination. And the court ordered that it did not have to
33 be provided. And the Circuit Court of Appeals said that is the law, we agree with the law.

But here we have a different situation, Judge. We are not asking for the statements of witnesses.

In the Gordon case and the Freyer case, which was a capital case there were statements of witnesses which the court ordered divulged to the defense so they would have an opportunity to prepare for trial.

So the argument is this, that to establish a capital case the Government does not have to divulge who the witnesses are going to be. But when the witness is on the stand on cross examination if a proper foundation is laid—and there are conditions and limitations and requirements as to that foundation—and then upon request of the defense the Court can order the statements divulged to defense counsel.

And here, Judge, we have this: These statements are testimony, and they can be testimony without one defendant taking the witness stand. If it is a confession it can be introduced in evidence by the Government on their direct case. If it is an admission it can be introduced by the Government on their direct case.
34

And the Bowman Dairy case, and the United States *vs.* Carter case is a further case that the Government relies on, and it says that it is only fair and conscionable that a defendant have an opportunity to see any statements that he made when he is excited, when he is upset, when he is in the custody of a marshal, or in the custody

of the FBI or the custody of the Grand Jury, that such statements should be turned over to him for his examination prior to trial.

And we respectfully submit, your Honor, that in order for this defendant, Mr. Brandt—he is the only one that we represent, he is the only one that we are interested in—can defend himself, the statements that have been made by counsel, in one instance an antagonistic defense; in another instances, "Yes, we received some of this unreported income, but we reported it"; in other instance a complete denial of any membership in this "joint venture," we want that in all good conscience, your Honor, so that Mr. Brandt can defend himself adequately and honestly and in all fairness and justice; that we have a right to it, and the Government should be ordered to let us look at these papers.

35 And by requesting them, your Honor, that does not destroy our position in this case. We feel that under the law—and the Government has not cited one precedent where they have been denied. They make a distinction in the Freyer case. That was a capital case, and the Government had to submit a list of witnesses. And in the Freyer case the defense obtained and were given the right to examine, if the Court please, the statements of even witnesses prior to the trial.

But here we have co-defendants. Here we have a joint trial. Here any statements or admissions or confessions, exculpatory or otherwise, that they make, can be introduced into evidence without the defendant even taking the witness stand. It certainly is a document or paper within the limitations of the narrow aspects of the Bowman Dairy case. And United States *vs.* Carter is authority for it, where the court there said that it is only fair and conscionable as far as the defendant is concerned to let him examine the statements that he made.

So that we respectfully submit, your Honor, that we are entitled to the particulars that we have requested, at least to a substantial part of them if not all of
36 them, your Honor, by virtue of the authorities.

Because this is an unreported income case, as far as the theory is concerned. And we are entitled to know about that "joint venture".

And if the Government doesn't have any books and records that they seized by process or otherwise, and they are not detaining them, of course they cannot tell us what they are.

But under Rule 17(c), your Honor, we respectfully submit that they have resisted our efforts to get these papers, that they have refused to obey our subpoena, they have asked that it be stricken down, and that we have a right even prior to trial in the interests of justice and good conscience to examine the papers that they have.

And if they don't have any papers in that respect, your Honor, then the very indictment itself should be open to assault.

By Mr. Reeb: May it please the Court, in answering the motions of the defendants filed herein I think we may group them into two categories. Three of the defendants have filed motions for a bill of particulars under Rule 7; and the defendant Brandt in addition is asking for discovery and production of documents
37 under Rules 16 and 17(c).

Before, however, proceeding further along these two lines of inquiry I think it should be necessary to advise the court and also counsel if they don't know, what the Government has to a certain degree or at least what the Government does not have. Otherwise this discussion would be purely academic.

The Government, with respect to Rule 16, which is the discovery rule, has indicated that it did not have any

documents which it received from the defendants or obtained by seizure or process.

With regard to Rule 17(c) and the subpoena issued thereunder the Government has resisted that primarily on the ground that the statements which they seek to obtain are not admissible in evidence and are not properly within the scope of Rule 17 (c).

However, I was somewhat amazed when counsel for Mr. Brandt indicated that he presumed that we did have a great many documents; I am surprised since counsel and I have talked about this matter, and I indicated it to him that the documents I thought he wanted were documents which were not in the possession of the Government, and that the Government had photostatic
38 copies of some documents and work sheets as to others, but did not have the type of documents which evidently are sought by the defense.

I think the motion with regard to Rule 16 indicates generally the type of documents which the defendants seek in regard to establishing a possible defense.

And on the motion for inspection, they ask for agreements, books of account, real estate contracts, mortgage papers, applications for mortgages, appraisal reports, minutes of board of directors' meetings and various documents of that type.

These records—the original records would perhaps be admissible in evidence either as direct or as circumstantial evidence, for or against the defendants. However it is not in the Government's possession.

I realize that the defendants would have difficulty in having a subpoena issued on those various records and on those various files. And I think that perhaps—and the Government is willing to do this—if the Government under Rule 17(c) could list those properties and subpoena those papers, if they are in existence out at the Polish

Roman Catholic Union, and if those are then made
39 available to all the defendants the Government feels that that would substantially meet the demands both for a bill of particulars and for discovery, which the defendants seek.

Before proceeding any further I think it is necessary, however, to see the framework of the nature of the case. I think it has been somewhat obscured by some of the arguments that have been made here, and I would like to indicate what the Government has already given previously in the argument in regard to severance.

First of all, the Government's case, it is true, is a specific item case, it is an unreported income case, as for that matter a net worth case is an unreported income, but proveable in a different type of a way.

The Government has indicated in its argument and in answer to the motions for severance the very framework of this case, to the extent that the defendants have said in some of their pleadings that we have not filed a formal bill of particulars. There may be some truth in that, and if they feel, or the Court feels that we should incorporate all of this various material in one bill of particulars we will be glad to do so.

40 However, in essence we have indicated that the whole joint venture here consisted of four individuals. That one individual was treasurer of the Polish Roman Catholic Union; another was the appraiser; another legal counsel; and finally the fourth man, Mr. Marzec, I think it is fair to designate him as a mere employee and collector. And the Government essentially is saying that in connection with obtaining favorable action and approval from the Polish Roman Catholic Union in connection with certain real estate mortgage loans various brokers paid to this joint venture—and I might say, I think in every instance it was through the defendant Marzec—paid certain moneys in order to procure favorable action.

It is the Government's position that the evidence will show that the defendant Marzec retained his share and paid over the remaining shares to the other three defendants.

Now, while we have not actually stated here what the position of each person is in the joint venture we think that in a sense is fairly obvious.

Mr. Marzec was a collector, and as treasurer it is our position that Mr. Brandt was in a position at the
41 institution to give an official O. K. and to obtain its favorable action of approval on the loans.

Mr. Sobieraj was in a position as appraiser—it was necessary for him to go along and to give the appraisals which were necessary in each instance.

And as far as Mr. Kusper is concerned, as legal counsel, since he had to approve all loans, his approval was necessary.

I think the defendants have known this from the beginning, and to the extent that they don't know it, I can state it in open court, and am willing also to put it in writing.

As far as further details are concerned, though, the Government has in its answer to the motion for a bill of particulars also stated the names of the various brokers, and given the numbers and the amounts of the transactions, broken down by years.

A typical example is Mr. Banach, who in 1949 had thirty-one transactions, and in 1950 had thirty-four.

All together there were 163 individual transactions, involving, as I understand it, separate real estate trans-
42 actions—or separate mortgage loans.

The government, however, feels that it should not be in a position where it has to actually itemize the payments over, let us say, from Mr. Marzec to each of these individuals, and the precise date of each transaction, and

also to give, as Brandt suggests in his motion, the exact circumstances as to each transaction.

I think it is sufficient to say that in connection with each one of the transactions which are listed here in categories, that there was a payment made to Marzec, and a payment made by Marzec over to the other individuals. And we have alleged that the distributive share of each defendant from these payments, less of course any amount reported by each individual on his tax return, constitutes the income alleged to have been unreported by each defendant during 1949 and 1950.

That is the way that the Government has computed this amount.

Now, for the approximate dates of these transactions, and more detail as to the street addresses, since there are 163 transactions in the two years, I think that the best way to obtain that would be for the Government
43 perhaps, if the others would join with us, to issue a subpoena under Rule 17(c) for any files in existence as to those transactions.

The payments would be made on or about the dates of these transactions, or these mortgage applications when made, and those would indicate to the defendants, give them all the particulars that they would need to defend themselves.

I would also like to say that if the files did prove bulky in that regard, that the fact that we would bring in these various documents would be a great saving of time during the trial, and would avoid, I would say, very long delays because to the extent that any of the defendants or the Government seek to use files in existence on each of these real estate transactions there of course would be, I think, perhaps long delays in the shuffling of papers. And the Government wants to avoid that as much as I am sure the defendants do. So that the Government I think is in

a position where it could issue the subpoena, since we do have information as to the addresses of the property which at this time the defendants do not have.

In regard to further particulars, as to the exact
44 computations and the exact dates and the exact circumstances, the defendant Brandt has cited the Singer case.

I suggest that that case to a large degree is different from the case that we have pending here. The Government has given I think much more disclosure than was given in the Singer case. In that case it was pointed out by the court that the books and records of the defendants were in the possession of the Government, and of course it was very difficult in that situation for the defendant to prepare his defense.

Furthermore, there is a more recent case from the same circuit, United States *vs.* Caserta, 199 F. 2d, 905--a more recent case, which shows the limitations upon the Singer case.

I fail to see how the fact that this is what defense counsel calls unreported income, and the other cases are net worth cases, that that should be given the great weight that he seeks to give to that factor. Because after all, all income tax cases are in a sense unreported income, it is just a difference in the method of proof of the specific items in net worth cases.

Therefore the Government feels with regard to the
45 bill of particulars that what the defendants need and are entitled to have been either given as of this date or can be obtained with the assistance of a subpoena on the records and the files relating to these 163 transactions.

The only real substantial controversy I would say that we have at this time with defense counsel is with regard to the statements of other defendants or the statements

of co-defendants. And I am rather amazed at the turn events have taken with regard to the Gordon case and the cases subsequent to the Gordon case.

If your Honor will recall, when briefs were first filed here on the point defense counsel for Mr. Brandt relied on the Gordon case, the Freyer case and the Echeles case, and made no great point of noting the distinction as to whether a witness was involved or whether a defendant was involved.

Then when the Government pointed out the limitations in the Gordon case, and called to the attention of the defense the three recent cases—Lightfoot, Roviera, and Bookie, here in the Seventh Circuit, we received the answer, and we have heard the argument here in
46 court where they contend that those cases are not in point because it is witnesses involved and not defendants. If that is true they initiated the line of inquiry, and those are the cases they cited for their point, and if we assume that they are abandoning that line of cases they have really no cases to support their contention.

They cite the Carter case as one which does support their contention. However, I would like to point out that in the Carter case that individual defendant was seeking his confession or his statement, because that confession or that statement could be admissible against that defendant.

And while there seems to be some difference in the cases as to whether a defendant should be given his statement or his confession in advance of trial we have been able to find no authority which holds that a defendant should be given the statements of his co-defendants. And I think the remarks of counsel to the effect that the Carter case so holds goes away beyond the ruling in the Carter case. And it certainly goes beyond the ruling in the Bowman case.

The Bowman case holds that matters which are
47 admissible as evidence under certain circumstances may be subpoenaed and inspected prior to trial. However in this case I fail to see how the statements of the other defendants should be given for inspection to the defendant Brandt.

After all those statements, if they are admissions, if they are confessions, would be admissions or confessions only—only as against the defendants who gave those statements, and should any of those defendants take the stand as a witness it is the Government's contention that the situation would be the same as in the Gordon case, the Roviera case, the Lightfoot case and the Bookie case. And that is, if a proper foundation is laid for the document by showing that a prior statement has been given and it is contradictory, then it can be turned over to counsel for purposes of impeachment. Until such a time arises, however, the statements of the other defendants will have no evidentiary value as far as the defendant Brandt is concerned.

The Carter case certainly does not support the position taken by the defendant Brandt.

And as far as the Freyer case is concerned it also does not support his position; that relates primarily
48 to the statements of witnesses; and the Freyer case, it should be emphasized, was a criminal case,—a capital case, where the Government was in any event required to give the names of the various witnesses.

The basic point in all these motions is of course an endeavor, as the defendants say, to have more information available so that they can prepare the defense.

The Government feels that in some of the matters here the defense has gone much too far in trying to get specific details, exact dates, and matters which it is submitted the Government would not have to give with such precision even on the trial of the case.

We feel that the material which has heretofore been given in argument and answers to motions for severance and in other instances has given the defendants as much as they are entitled to.

The availability of the files of these individual transactions certainly would give the defendants the approximate dates, and would indicate or fail to indicate perhaps the degree of participation of the respective defendants.

The Government submits that as far as the state-
49 ments of the individual co-defendants are concerned the defendant Brandt is not entitled, for example, to any statement which may have been given by the defendant Sobieraj, to any statement which may have been given by the defendant Kusper, or to any statement which may have been given by the defendant Marzec.

For these reasons the Government feels that it has supplied enough in the way of particulars, and it also feels that the subpoena requesting the statements of the individual defendants other than Brandt should be denied.

By Mr. Sokol: Your Honor, I wonder if I might say a word before the Court rules?

By the Court: Yes.

By Mr. Sokol: This indictment does not charge Mr. Brandt or Mr. Sobieraj or Mr. Kusper with having received moneys from that man Marzec. If it did we would be right here asking in our bill of particulars what the items of income are.

Now, all the brokers' names in the world that ultimately trace their conduit, so to speak, or the channel of money to Mr. Marzec, whom Mr. Reeb refers to, won't help the defendants,— the other defendants in deter-
50 mining what they must defend against.

Now, if there are specific dates in which the Government alleges, or let us say, proposes to allege in a new bill of particulars which will incorporate some of the

things that Mr. Reeb has indicated—and I believe that is implicit in what Mr. Reeb has said, that he will file, let us say, a square document now which will embrace what he said, if it leaves out the very thing which he said then we cannot prepare for trial.

We would like to know if there are specific days or dates, or approximate dates, and specific items in which this man Marzec now alleges that he paid moneys to these other defendants. That should be stated otherwise we can't possibly defend against it. It is not even alleged in the indictment itself.

Those are the specific items that I have alluded to.

By Mr. Klein: May I say one thing, your Honor?

By the Court: Yes.

By Mr. Klein: Mr. Reeb has stated, your Honor, that we could get that information, if we desire it, by a subpoena. But the situation, your Honor, in simple language is just like this: They allege that we received
51 —that Sobieraj received in the two years involved certain income which he had not reported, as a result of this "joint venture".

Now it appears from his statement that he didn't receive these items from the brokers mentioned in the bill of particulars, but that Marzec received all these payments and then divided the money up so that some of it came to the defendant whom I represent.

But they do state what the total sum of that unearned income is. Now, that must be made up of certain items, because he didn't say that he got that at one time, and it is very evident that the money is made up of several items. And they must know what those items are. The Government must have that information because they presented it to the Grand Jury.

We are entitled to know what those items were that make up that total, and also what the dates are on which

Marzec is supposed to have gotten these amounts, and given these amounts to Sobieraj. And I think, your Honor, that that is an easy matter for the Government to furnish us with. And without that we are at a loss, we cannot defend.

52 By Mr. Reeb: If the Court please, the items themselves are based upon these individual 163 transactions of this joint venture, where Marzec took the money on behalf of all the other members and then distributed over the share to each individual after keeping his own.

I think the precise dates on which he paid over on each transaction is evidentiary. It was paid over at or about the time of each of these transactions. And I think that is enough to inform the defendants where the money was coming from, because they know where the money was coming from, and they know who the man is who distributed it, and they also know the approximate dates, as we have the various transactions listed here during the years 1949 and 1950. But of the 163 transactions, to give the exact dates when it was received and the exact dates when it was turned over, we think that is calling for too much.

By Mr. Schaffenegger: Your Honor, in reply to what Mr. Reeb is saying, he is saying a lot of things orally, but we think that we should have a right to have exactly what they are willing to give us in a bill of particulars which can be formally filed in court so that it can be used

53 as a matter of record in this case.

Now, it is very easy for the Government, after they have gone through a long Grand Jury investigation and after they have prepared the indictment, to come into court and say, "Well, these defendants don't need any information at all. We have given them general information."

All that they say, Judge, as far as Mr. Brandt is concerned, is that he is treasurer of the Polish Roman Catholic Union. And it is alleged that Mr. Marzec gave him a distributive share of a certain amount of money. How much, what proportion it was, why he gave it to him, what was this operation, Judge? They shouldn't keep it a secret.

We want to know. We have a right to know so that we can plead.

Their contention, Judge, is that all they have to do is to give us the total figures of $107,000.00 for the year 1950. But when we take the indictment we find that for that year when that terrific amount of money was supposed to have been obtained that Mr. Brandt is only charged with $16,395.00, but for the preceding year where the total assets were supposed to have been $73,000.00 he is charged with $18,440.00. We should have a right to
54 know how they arrive at those amounts of money.

Of course, Mr. Reeb says that these cases are for unreported income tax. Now, we are not so naive, your Honor, as to deny that. There is no question about that. But from an examination of the line of cases there is a complete line of distinction between the theory of proof. And that is what we want in this particular case, how do they intend to prove their case.

In the one instance, Judge, on the net worth theory, of course particulars are very difficult to obtain, and should not be obtained, and the courts have very generally ordered that they be denied.

But here they are talking specifically about specific amounts of money, and they are talking about specific dates, and specific years and specific defendants. And they just can't charge him because he was treasurer of the Polish Roman Catholic Union, without telling him

what the amount was and what was the consideration for it.

They could have made the president of the organization, they could have made a bookkeeper or an accountant or a telephone operator a party defendant and they would have just as much information as they have divulged
55 to us at the present time.

Now, Judge, there are 163 transactions. And we know that the court is not going to let us demand all the specific details, but the court in its discretion can order the Government to give us additional information so that we can at least prepare for this long and cumbersome trial, because it will be expeditious for the trial of the case and because it will be fair and just to this defendant whom we represent, Mr. Brandt.

Now Judge, the Government comes in, and Mr. Reeb says he has been discussing the matter with us, but we don't know whether they have got books or records. We know this, that on the subpoenas they have asked that they be quashed. They don't come into court and in their answer say that they don't have books and records, that third parties have them.

Their answer, Judge, as far as this case is concerned is that the subpoena demands are too broad, that they are not supported by an affidavit, and that it is asking for statements of co-defendants, and if other parties have books and records, if they prepare this case in such a manner that they believe out there somewhere someone has their books and records on which they are going
56 to rally, that is entirely their business.

But if they have photostats, if they have information that is going to be used as evidence — and I hope they are not taking the position that a photostat can be evidence — that is why they have got the photostats, in the event the originals are lost or in the hands of third

parties they are going to use those photostats. And if in the preparation of their case they have prepared it by virtue of these photostats we should have the right to look at them prior to the trial.

There are 163 transactions involved here, and we should be entitled to the information by an inspection of their books and records.

Now, the Gordon case. Judge, we didn't cite the Gordon case as authority, and we say that in our brief. We say that the rationale of that case is that in requesting statements of witnesses there are limitations, because witnesses take the witness stand only when the Government calls them, and the Government doesn't have to tell us who their witnesses are going to be. The witnesses may never take the witness stand.

Now, we are to have a joint trial. The Government
57 insisted that we have a joint trial. The testimony of the witnesses will come from the witness stand. And any and all evidence against the defendants will come from the witness stand.

And documents and papers, under the Carter case and under the Bowman Dairy case are such papers that should be produced — statements should be produced.

Now, the fact that they are statements of co-defendants, Mr. Reeb does not mean that they are not evidence, because they are, Judge.

These defendants don't have to take the witness stand because the statements that they make, whether they are admissions or confessions or exculpatory can be produced on the stand without even the defendant taking the stand. And they certainly are direct positive evidence and we should have a right to them, Judge, because the reason for withholding them from us entirely disappears.

By the Court: You are not contending that the state-

ment of A in this sort of a case is admissible as evidence against B, are you?

By Mr. Schaffenegger: No, I am not, your Honor.

But I am saying this, that in a joint trial, Judge — and that is why we so earnestly urge the severance—that
58 an admission made by A from the witness stand where all four of these defendants are going to sit around the same table, is going to be harmful to him. And I know that the Court is very diligent and very careful and very stern in separating the testimony as applicable to each individual defendant.

By the Court: I don't think it is fair to mix up these questions with the question of evidence. I think they are two separate questions.

By Mr. Schaffenegger: I agree with the Court of course, one hundred per cent. But I say that the statements of these co-defendants, the Government charges that this is a "joint venture," and they say that by virtue of this "joint venture" these four men are tied directly together, that they had an operation together, and any statements that were made by co-defendants, your Honor, where even one of the co-defendants has said that he has a completely antagonistic defense, that we should have a right, because the Government's case is not going to be harmed in any way, Judge, because it is presumed that they have got a case, a very good case. They have got all the testimony, they have done all the preparation of the case and this is the first time we are in court, your Honor, and we are asking for that little
59 bit of information that we should have in order that we can honestly and fairly prepare to defend these men, particularly our client, because he is presumed to be innocent, and he is going to be innocent until the Court and jury finds him guilty. And that is a long ways to go.

But be merely filing a skeleton indictment that they should not take the position that we have given you enough information. And they shouldn't say that there is no difference between the unreported income theory and the net worth theory. All of the cases recognize the difference. And we should have that information, Judge. And if statements of co-defendants have become part of certain documents and papers we should have a right to them also.

By the Court: On the motions of the defendants Brandt, Kusper, Sobieraj and Marzec for bills of particulars:

There are eight counts in this indictment, two relating to each of the four defendants, and the first two counts relate to the defendant Brandt. Generally speaking the eight counts are much alike.

Of the two counts relating to the defendant Brandt
60 the first count relates to income for the year 1949, and Count 2 relates to income for the calendar year 1950. The first count charges, or

"The February 1955 Grand Jury charges that:

"That on or about the 15th day of March, 1950, in the Northern District of Illinois, Eastern Division, Frank A. Brandt, late of Chicago, Illinois, who during the calendar year 1949 was married, did wilfully and knowingly attempt to evade and defeat a large part of the income tax due and owing by him and his wife to the United States of America, for the calendar year 1949, by filing and causing to be filed with the Collector of Internal Revenue for the First Internal Revenue Collection District of Illinois, at Chicago, Illinois, a false and fraudulent joint income tax return to behalf of himself and his said wife, wherein it was stated their joint net income for said calendar year was the sum of $15,532.70, and that the amount of tax due and owing thereon was the sum

61 of $2,969.44; whereas, as he then and there well knew, he received during the said calendar year additional income, consisting of his share of the proceeds from a joint venture, conducted by and between Stanley T. Kusper, Bruno L. Sobieraj, and Joseph T. Marzec, and himself, and that the joint net income for himself and his wife, for the said calendar year was, in fact, the sum of $33,972.70, upon which said net income there was owing to the United States of America an income tax of $9,452.00, in violation of 26 U. S. C. Section 149(b)."

Now, the Answer of the United States to the motion for bill of particulars is as follows:

"Now comes the United States of America, by R. Tieken, United States Attorney for the Northern District of Illinois, and in answer to the motions filed herein by certain defendants for a bill of particulars, states the following:

"1. The nature of the Government's case and the 62 source of the unreported income charged to each defendant have been heretofore stated by the Government in its answer to the defendants' motions for severance and in the arguments in open court. The Government hereby incorporates by reference Paragraphs 1 and 2 of its Answer to the motions for severance as a statement of the theory and nature of the Government's case."

Now, Paragraphs 1 and 2 of the Government's Answer to the motions for severance, are as follows:

"1. Upon trial of the above-entitled cause, it is anticipated that the evidence will show that:

"A. During the taxable years 1949 and 1950, the defendants, Frank A. Brandt and Stanley T. Kusper, were officers of the Polish Roman Catholic Union of America, being respectively the

treasurer and general counsel of said organization. During the same years, the defendant, Joseph T. Marzec, was an employee of the organization, and the defendant, Bruno L. Sobieraj, was
63 employed as an appraiser in real estate transactions.

"B. In connection with the application for and approval of certain real estate mortgage loans made by the Union during the said years, the defendants herein entered into a joint venture hereby payments, in addition to those customarily required by the Union on real estate loans, were required to be made to the defendant, Joseph T. Marzec, and were in fact made to him by certain real estate brokers in order to obtain favorable action and approval on advantageous terms to said brokers of mortgage loans submitted to the Union.

"C. In accordance with the understanding by and between the defendant, the defendant, Joseph T. Marzec, retained his share of the proceeds and distributed the balance collected from these transactions to the other defendants.

"D. Each of the defendants during the said years attempted to evade the tax due and owing on issue of the proceeds of the joint venture of
64 by failing to report certain sums received from the same joint venture.

"2. All of the unreported income and evaded taxes charged to each defendant as set forth in the indictment are based upon and arise from the receipt by each defendant of his respective share of the proceeds of the joint venture referred to previously. No other source of unreported income will be presented in this case."

Now, coming back to the Answer to motions for bills of particulars, Paragraph 2:

"2. The real estate brokers or others persons making payments in addition to those customarily required by the Polish Roman Catholic Union in connection with real estate mortgage loans and a summary of their payments are as follows:"

Here follows a tabulation headed "Mortgage Loans."

And then there are five columns.

Over the first column is the word "Payer".

Over the second and third columns are the figures respectively "1949" and "1950".

And under the "1949", and over the second column is "Number" and over the third column is "Amount."

65 And over the fourth column is: "Number", and over the fifth column is, "Amount" as follows:

"Mortgage Loans

Payer	1949 Number	1949 Amount	1950 Number	1950 Amount
Henry Banach	31	$29,660.00	34	$42,620.00
Max Miller	21	22,070.00	29	37,370.50
Thomas D. Scott	7	5,010.00	4	1,290.00
Harold S. Shrader	3	5,475.00	10	12,880.00
Cyril J. Milton	2	4,200.00	2	3,700.00
Clyde Cutler (Mrs.)	6	2,655.00	2	1,005.00
William J. Hoppe	5	4,080.00	1	600.00
J. Cutler Sheldon			6	7,640.00
Totals	75	$73,150.00	88	$107,105.50"

"3. The distributive share of each defendant from payments made by the persons listed above (less, of course, any amounts reported on his tax returns), constitutes the income alleged to have been unreported by each defendant during 1949 and 1950."

Mr. District Attorney, what do you mean by these words, "less of course, any amounts reported on his tax returns"?

By Mr. Reeb: I mean, for the four defendants here the total figures paid into the joint venture, I mean
66 to indicate the same defendants.

By the Court: Less such part of the foregoing as reported by the defendants, is that what you mean to say there?

By Mr. Reeb: Yes.

By the Court: Do you want it inserted?

By Mr. Reeb: Yes, that is right. I think that is better, yes:

Less the amounts reported by any of the defendants.

By the Court: Less part of the foregoing, if any.

By Mr. Reeb: That is right, the part of the foregoing sums reported.

By the Court: If any.

By Mr. Reeb: If any.

By the Court: That is right.

By Mr. Reeb: That is right.

By the Court: I have read that because the Government is bound by its statements, the one being the Government's Answer to motions for severance, filed January 20, 1956, and the other being to the Government's Answer to motions for bill of particulars filed February 13, 1956. And I think these statements constitute a sufficient detailing of the charges of the Government
67 against the defendants.

Accordingly, the motions for further particulars will be denied.

By Mr. Sokol: May I say a word, your Honor?

By the Court: No. Not now.

By Mr. Sokol: Very well.

By the Court: I am not through yet.

Are you pressing defendant Frank A. Brandt's motion to inspect the minutes of the Grand Jury?

By Mr. Schaffenegger: We haven't had a ruling on that as yet, your Honor.

By the Court: I cannot see any reason for that extraordinary proceeding. Therefore that motion will be denied.

By Mr. Schaffenegger: Very well, your Honor.

By the Court: "Motion for discovery and inspection."

"Defendant, Frank A. Brandt, moves the Court for an order requiring Robert Tieken, the United States Attorney for the Northern District of Illinois, Eastern Division:

"1. To produce and permit the defendant to inspect and to photograph each of the following:

68 "A. All books, papers, documents or objects obtained from defendant, Frank A. Brandt, and obtained by seizure or process from others, including the defendants, Stanley T. Kusper, Bruno L. Sobieraj and Joseph T. Marzec.

"B. All books, papers, documents or objects obtained from defendant, Frank A. Brandt, and obtained by seizure or process from others, including the defendants, Stanley T. Kusper, Bruno L. Sobieraj and Joseph T. Marzec, having to do with an alleged joint venture, such books, papers, documents or objects being, agreements, contracts, escrow agreements, books of account, real estate contracts, mortgage papers, applications for mortgages, appraisal reports, minutes of directors' meetings approving or denying loans, closing statements, financial statements, deeds and conveyances, or copies thereof, day books, ledgers, journals, check books, canceled checks, check stubs, correspondence, receipts and income tax

returns for the period of calendar years 1949 and
69 1950, relating to the said joint venture alleged in Counts 1 and 2 of the indictment."

What is your answer to that, Mr. District Attorney?

By Mr. Reeb: The answer to that is that the Government does not have in its possession items answering that description, with one exception, which is the income tax return, which we have said each defendant may see his own return.

By the Court: Are you content with that answer?

By Mr. Schaffenegger: Yes, your Honor, and we expect counsel, the District Attorney, to be bound by that answer during the trial.

By the Court: Yes. He says you can inspect the income tax returns of your client Mr. Brandt.

By Mr. Schaffenegger: Yes.

By Mr. Sokol: Your Honor, may I be excused? I am late for a funeral.

By the Court: Yes.

Now, then, here is this motion for the papers called for by the subpoena, and there is no difference between your motion and the subpoena as to that?

By Mr. Schaffenegger: No, your Honor, the language is exactly the same.

70 By the Court: Now Mr. Schaffenegger in his affidavit says:

"2. That the certain and all documents, books, papers and objects (except memoranda prepared by Government counsel, and documents or papers solicited or volunteered to Government counsel, which consist of narrative statements of persons or memoranda of interviews, obtained by Government counsel, in any manner other than by seizure or process, (a) in the course of the investigation by the February, 1955, Grand Jury, which resulted in the return

of the indictment herein, and (b) in the course of the Government's preparation for trial of this cause, if such books, papers and documents—"

I have a Judges' meeting called for this day, and whether to delay you or my associates, I believe my associates would be more concerned about it than you. So if you will wait a few minutes, I will come back and finish this up.

(After a recess, the following:—)

By the Court: I have been reading this affidavit of Mr. Schaffenegger's.

71 He says that these papers are evidentiary and relevant. He suggest that I substitute conclusions for my judgment. But there is nothing for me to act upon except counsel's judgment as to whether they are evidentiary and relevant:

"(1) Are evidentiary and relevant;

"(2) Are not otherwise procurable by the defendant reasonably in advance of trial by the exercise of due diligence.

"(3) That the defendant cannot properly prepare for trial without such production and inspection in advance of trial and the failure to obtain such inspection may tend unreasonably to delay the trial."

There are no facts set forth upon which the Court could exercise any judgment whether they are evidentiary, whether they are relevant, whether they are material, or whether they are competent, or on which the Court can exercise its judgment as to whether they are procurable by the defendants in advance of the trial.

Furthermore, I do not think in a case of this kind one defendant can procure the statements of other defendants until a basis has been presented which would make

72 those statements admissible. If one of the other defendants went on the stand just like any other de-

fendant if he has made prior inconsistent statements to what he has testified to they can be required to be produced to impeach him. But that is not the situation here, I do not see any showing made which would warrant me to order the production of these other papers, or which would warrant me in refraining from quashing the subpoena which is outstanding. And that will be the order.

You may present the draft of an order, Mr. District Attorney. When do you want to do that?

By Mr. Reeb: I would like to have it in here tomorrow morning.

By the Court: Tomorrow morning at 10:00 o'clock.

Are the three defendants here who have not been arraigned?

By Mr. Reeb: I believe so.

By Mr. Schaffenegger: Mr. Brandt is here, Judge.

By Mr. Klein: My defendant is here, Mr. Sobieraj.

By Mr. Struett: Mr. Marzec is here.

By the Court: Let them step forward.

By Mr. Klein: Frank A. Brandt is present in court.

73 By the Court: Mr. Kusper, Mr. Sobieraj, Mr. Marzec. Who has not pleaded?

By Mr. Schaffenegger: Frank A. Brandt.

By the Court: What is the plea?

By Mr. Schaffenegger: The plea is not guilty. And we waive the reading of the indictment.

By Mr. Klein: I represent Sobieraj. He pleads not guilty.

By Mr. Phelan: The defendant Marzec pleads not guilty. We waive the reading of the indictment.

By the Court: Have all defendants pleaded?

By Mr. Phelan: Yes.

By Mr. Reeb: That is correct, your Honor.

There is one more question and that is the setting for trial.

By the Court: When do you want to try this?

By Mr. Reeb: I was wondering if we could set it for the latter part of May.

By the Court: How long will it take to try it?

By Mr. Reeb: Two weeks, or perhaps two and a half weeks.

By the Court: Let me suggest this, if you are going to have a lot of papers, get together—

By Mr. Reeb: We will have several, your Honor.

By the Court: Get together with counsel and see
74 what can go in without objection, if any, and what you will insist upon going in, so that counsel can have their objections in mind.

By Mr. Reeb: I think that we can work that out.

By the Court: That would be very desirable to do.

When do you want to try it?

By Mr. Reeb: I would like to try it in the latter part of May if that is agreeable to the Court and convenient to counsel.

By Mr. Schaffenegger: We would like the early part of June.

By the Court: I don't want to get over too far into June.

How about May 21?

By Mr. Reeb: Fine.

By the Court: May 21.

75 United States of America
Northern District of Illinois
Eastern Division

IN THE UNITED STATES DISTRICT COURT
• • (Caption—No. 55 CR 679) • •

CERTIFICATE

I hereby certify that the above and foregoing transcript comprising pages numbered consecutively from 1 to 74 is a full, true and accurate transcript of my original shorthand notes of the proceedings had in the above-entitled cause on February 20, 1956, before the Honorable John P. Barnes, Chief Judge of said Court.

/s/ Roy E. Fuller
Roy E. Fuller
Official Court Reporter
United States District Court
Northern District of Illinois

April 17, 1956.

1 United States of America
Northern District of Illinois
Eastern Division

IN THE UNITED STATES DISTRICT COURT
• • (Caption—No. 55 CR 679) • •

TRANSCRIPT OF PROCEEDINGS
(Filed Mar 8 - 1957)

had in the above-entitled cause before the Honorable John P. Barnes, Chief Judge of said Court, in his court room in the United States Court House at Chicago, Illinois on Friday, August 24, 1956, at 10:00 o'clock a. m.

Appearances:

Hon. Robert Tieken, United States Attorney,
(450 U. S. Court House, Chicago 4, Ill.),
represented by

F. William Reeb, Esq., Assistant United States District Attorney,
on behalf of the Government;

Bernard H. Sokol, Esq.,
on behalf of Stanley T. Kusper;

2 Messrs. Breen, Brumlik & Schaffenegger,
(209 S. LaSalle St., Chicago 4, Ill.),
represented by
John V. Schaffenegger, Esq.,
on behalf of the Defendant

Frank A. Brandt;
Joseph A. Struett, Esq.,
(105 W. Madison St., Chicago 2, Ill.),
on behalf of the Defendant

Joseph T. Marzec.

And thereupon the following proceedings were had herein:—

By the Clerk: No. 55 CR 679, United States of America vs. Frank A. Brandt, Stanley T. Kusper, Bruno L. Sobieraj, and Joseph T. Marzec.

Motion for order, under Rule 17(c) for examination of certain records.

By Mr. Sokol: My motion is writing, if the Court please. This is a motion under Rule 17(c).

In this case, which is a criminal tax case, there are four defendants. The indictment was procured and the bill of particulars of the Government would appear to bear
3 out the fact that the indictment was returned on the testimony of one of the co-defendants.

The bill of particulars, and it is set forth in my motion, of the United States, indicates that the only source of income which will be tried, allegedly came from this co-defendant.

I have worked during the summer in preparation for trial of this case, and find I can't go any further unless I have available to me certain records with respect to that man's income tax returns and his bank statements.

I might mention in passing that I have served and I have alleged in my motion that I have served a subpoena duces tecum on the Pioneer Bank and on Joseph Marzec and his wife, asking for those records.

This case is set for trial on October 1st.

By Mr. Reeb: Well, the Government has very little to say about this, your Honor, inasmuch as I understand from the motion that the subpoenas were served upon a co-defendant, Joseph Marzec, and upon his wife, Mrs. Marzec, and upon a third party, the Pioneer Trust & Savings Bank. Although the Government was noticed, in here it is not asking for any order of inspection as to any records in the possession of the Government.

By Mr. Sokol: That is right. I am not asking for anything like that. I have asked you already and you did not have them.

By Mr. Struett: Your Honor, we represent a defendant.

By the Court: You represent Marzec?

By Mr. Struett: Yes. As I pointed out to your Honor some months ago, our position is most antagonistic to these other defendants. That is the reason I asked for severance, which the Government opposed and which your Honor denied. They are asking us to produce evidence compelling this man to produce evidence against himself and I am going to object to it.

By Mr. Sokol: Your Honor, may I say one thing to that? I think so far as the records, we might start with the records of the Pioneer Trust & Savings Bank. I take it there is no question of self-incrimination there.

By Mr. Struett: Of course they are bank records, but the other matters—

By Mr. Sokol: I am asking for two different orders. I wonder if we can dispose of the first one. Apparently there is no objection to my getting bank statements from the Pioneer Trust & Savings Bank. That is one order. So far as Marzec—

By the Court: I think I will put this matter over and spend some time with you. I remember something about it. I want to get it back in my mind.

(Thereupon the Court gave his attention to other matters upon the call, after which the following further proceedings were had herein:—)

By the Clerk: No. 55 CR 679, United States of America vs. Frank A. Brandt, et al.

By Mr. Sokol: I think I have indicated the nature of my motion, your Honor.

By Mr. Struett: I would like to say this to your Honor and I say it in all sincerity:

I invited your Honor's attention to it when this matter first came before you.

Mr. Marzec was a collector of this money. He came in on these commissions and the whole Government's case is predicated upon the theory that Mr. Marzec, in turn, distributed this money, parts, substantial parts, to these other three gentlemen in certain proportions and our defense, so far as Marzec is concerned, is primarily that he was a collector, and if the Government has a case against these other three people, which, in the main is dependent upon the information we gave the Government, and Mr. Marzec's testimony—and to my mind our position is entirely antagonistic to that of these other three defendants—bearing that in mind, I have not communicated with counsel; I have not discussed this matter with counsel.

At the same time, as we stand here now, apparently we are all four going to be forced to trial together and

I just have to take the position that we can't be compelled to produce evidence against ourselves, Judge.

I may be wrong on it but you can't compel a defendant to produce evidence. I can't talk to these gentlemen. I don't want to talk to them. I don't know what the Government is going to do as of now. I haven't any idea about that and I have just got to take that position.

We have got our own evidence and what use we want to make of it is certainly within our province, depending on the trial. Our position is entirely antagonistic so
7 far as this case is concerned, to these other three persons, and I can't say it any stronger. I am going to have to submit it by way of evidence. I think we all recognize it.

By the Court: Your position is that this evidence that they are asking be produced might tend to prejudice your client?

By Mr. Struett: Certainly.

By the Court: Any answer?

By Mr. Sokol: Yes. If the net effect of producing it is to incriminate the defendant Marzec, that is too bad. That is too bad. I have this—

By the Court: If a pretty good defense is generally presented—

By Mr. Sokol: Let me just finish this, your Honor. According to the Government's bill of particulars, which is scant, all that appears is that money was given to Marzec by a number of named individuals, but there is nothing in the Government's bill of particulars that says what Marzec may have given to any of the defendants. Now, I have prepared for trial.

By the Court: I don't need to go beyond this
8 objection, now. If a man stands before me and says that these are individuals he refuses to answer,

or refuses to produce something because of fear it will incriminate him, I don't know what else to do about it but say, "Objection sustained."

By Mr. Sokol: Presumably he has already incriminated himself.

By the Court: I can't help it. I don't know.

By Mr. Sokol: According to the evidence. I should like to say, according to the discussion that has taken place before the bench and I think I might as well say it —I am certainly going to indicate it in the trial of this case—Stanley Kusper stands in a peculiar position. Stanley Kusper; I represent no one else. He says after all, the United States, if it has received certain checks from this man Marzec, and it is all declared on his income tax return; he declared everything he ever got from this man Marzec on his income tax—if I can't find out what the nature of the Government's case is against Stanley Kusper from Joe Marzec, who is the principal witness against Stanley Kusper, I certainly ought to be entitled to my motion. I ought to be entitled to ask for two things.

I didn't make the motion. Breen made the motion to
9 grant this motion that the United States furnish me with it. I will bring in a written motion that the United States furnish me with three things: One, the income tax returns of Mr. and Mrs. Joe Marzec, photostatic copies, which the United States does have; two, any photostats of bank statements of Joe Marzec showing deposits in or withdrawals from the Pioneer Trust & Savings Bank or any other bank in which Mr. and Mrs. Marzec had an account in the years involved in the indictment, 1948, 1949 and 1950; No. 3, I will make the motion that the United States give us a specific bill of particulars in which they say precisely what the case is against Kusper, to wit, what sums are alleged to have been given by Marzec to Kusper. We are set for trial in October.

By the Court: I am accustomed to crossing a bridge when I come to it. It is my practice to not cross it until I come to it. You haven't crossed this bridge here. The objection is sustained.

By Mr. Struett: I take it they have got a subpoena out for us on October 1st, Judge. I don't assume, in the light of your Honor's ruling—

By the Court: Subpoena for what?

By Mr. Struett: To produce this matter.

By the Court: I will cross that bridge when I come to it.

By Mr. Sokol: My subpoena to the Pioneer Trust & Savings Bank.

By the Court: I don't know anything about it. I will cross these bridges when I come to them.

By Mr. Sokol: That was brought before you today. Mr. Struett said he had no objection to it. I would like that part of the order. I have two separate orders, one for page 1 and one for page 2. One applies to the bank and one applies to Marzec. Mr. Struett conceded I was entitled to third party evidence.

By the Court: Where is the Pioneer Bank?

By Mr. Sokol: There are two orders stapled together. Turn the page. That can just be pulled off and signed.

By the Court: Did you serve notice on the Pioneer Trust & Savings Bank?

By Mr. Sokol: Of this motion? I have issued a subpoena.

By the Court: I can't tell the Pioneer Trust & Savings Bank to give you papers unless you bring it in.

By Mr. Sokol: Very well. I will serve them with papers. I assume Mr. Struett would represent them.

As long as we are here and time is growing short, I would like to renew—excuse me—make my motion for the

bill of particulars and this production of the documents I have requested of the United States.

By Mr. Reeb: I would like to have that motion in writing, your Honor, if possible.

By the Court: Yes, put it in writing.

By Mr. Sokol: I withdraw the motion, then, and I will make it in writing. Thank you.

12 United States of America
Northern District of Illinois
Eastern Division

IN THE UNITED STATES DISTRICT COURT

* * (Caption—No. 55 CR 679) * *

TRANSCRIPT OF CERTAIN PROCEEDINGS

had in the above-entitled cause before the Honorable John P. Barnes, Chief Judge of said Court, in his court room in the United States Court House at Chicago, Illinois, on September 10, 1956, beginning at 10:00 o'clock a. m.

Present:

Hon. Robert Tieken, United States Attorney,
represented by
Albert F. Manion, Esq., Assistant United States Attorney;
Mr. Breen
Mr. Sokol
Mr. Klein,
And other Counsel.

13 And thereupon the following among other proceedings were had herein:—

* * *

By Mr. Manion: May it please the Court, we submit respectfully to Mr. Sokol that his present motion before the court this morning is essentially repetitious, in that

it is an attempt to do by indirection what he has failed to do by direction.

Last spring multiple motions were presented, all of which were argued extensively, and were decided at that time. We submit that there is essentially nothing new about the present motion.

• • •

By the Court: Well, the best judgment I have is to deny this motion.

I think this case ought to be gotten to trial.

• • •

By the Court: I want to try it. I don't want to be hearing preliminary motions from now on, I have heard enough.

• • •

14 United States of America
Northern District of Illinois
Eastern Division

IN THE UNITED STATES DISTRICT COURT

• • (Caption—No. 55 CR 679) • •

CERTIFICATE

I hereby certify that the above and foregoing transcript comprising pages numbered consecutively from 1 to 13 is a full, true and accurate transcript of the original shorthand notes of all the proceedings had upon the hearing of the above-entitled cause on August 24, 1956, and excerpts from the proceedings of September 10, 1956, before the Honorable John P. Barnes, Chief Judge of said Court.

/s/ Roy E. Fuller
Roy E. Fuller
Official Court Reporter
United States District Court
Northern District of Illinois

January 21, 1957.

1 United State of America
Northern District of Illinois
Eastern Division

IN THE UNITED STATES DISTRICT COURT

* * (Caption—No. 56 CR 679) * *

TRANSCRIPT OF PROCEEDINGS
(filed Mar 8 1957)

had in the above-entitled cause before the Honorable John P. Barnes, Chief Judge of said Court, in his court room in the United States Court House at Chicago, Illinois, beginning on Monday, February 4, 1957, at 10:00 o'clock a.m.

Appearances:

Hon. Robert Tieken, United States Attorney, (450 U. S. Court House, Chicago 4, Ill.),
represented by
Albert F. Manion, Esq.,
on behalf of the Government;

Joseph A. Struett, Esq.,
(105 West Madison St., Chicago 2, Ill.),
on behalf of the Defendant.

2 And thereupon the following proceedings were had herein:—

By the Clerk: United States of America vs. Joseph T. Marzec. No. 55 CR 679.

By Mr. Struett: If your Honor please, I have a verified motion under oath asking to vacate your Honor's order of January 23rd and for a continuance. I would like to be heard very fully on it.

By the Court: How much time will you require?

By Mr. Struett: An hour to an hour and a half.

By the Court: I will hear it, but not at this time. I will hear you just as soon as I get to you.

By Mr. Manion: Your Honor, may the Government at this time ask leave to file a written answer to Mr. Struett's motion?

By the Court: Yes.

(And thereupon the Court gave his attention to other matters upon the call, after which the following further proceedings were had herein:—)

By the Court: Proceed, gentlemen.

By Mr. Struett: Have you read the motion?

By the Court: Yes, I read it last week.

3 By Mr. Struett: All right. If your Honor please, this presents some very novel and very interesting questions.

I will try to make it as briefly as I can and hit the highlights and try to dispose of it to the best of my ability in the light of an answer which was filed by the Government as of this morning.

As I go along, I will try to point out what I believe the issues are as they may apply here, and as they may have been raised by the Government's answer.

Basically, our motion here is a bit different than it was when I prepared it. It went to the printers. I got it back Tuesday.

I filed it immediately, and, as a matter of fact while I was in the process of filing it, the defendant Brandt entered a plea of guilty.

As of today there really remains but two basic questions. One is whether this Court will try this defendant as indicated on the 23rd, prior to the defendant Kusper, and secondly whether or not we are entitled to a continuance pending application for executive clemency in

the light of the discussions of our Supreme Court in
4 the Whiskey cases; and third, if the Court decides to
go ahead and deny those motions for a continuance, whether or not we should have an opportunity here on behalf of this defendant to prepare adequate motions on his behalf and have a trial date reset.

This is a matter that is not something that just arose overnight. It arose, in our rights which we contend we have—it arose years ago.

As a matter of fact, I would say those rights came into existence as far back as 1954, and they have been followed through, as far as we are concerned, consistently as of this date, and as appears herein, under oath, should the Government desire to proceed against Mr. Kusper, this defendant, Maizec, is ready, willing and able and will, should the Government desire, testify against Mr. Kusper.

The facts which I set forth on pages 12 to 20 are—some of them are denied, and some of them are not.

In connection with their denial, I ask your Honor, or invite your Honor's attention to the affidavit attached
to the Government's answer they filed this morning,
5 and it would appear therein that this affidavit is
made by Mr. Manion and his first connection with this case was on about May 20, 1956, and that he would deny what transpired prior thereto by information and belief as to what somebody else told tim.

That is not, in my judgment, a proper denial. I mean, you may have a factual case here, as I say, but I want to bring that to your Honor's attention right away.

He doesn't have any right to come in here, in my judgment, and deny facts, where we have a right to make certain allegations on our information and belief and positively—and he, from what somebody else may have said

that they had no deal, is not entitled to deny them and say there was no deal or that or the other thing.

Basically, here are the facts, your Honor: This union was a fraternal organization. My man was an employee of that union.

It made loans to individuals through brokers, and, in turn, those brokers paid commissions to my client who is designated, as I said here, a collector, which they don't deny.

He, in turn, distributed those commissions to certain other persons, particularly the defendant Brandt,
6 particularly the defendant Sobieraj and particularly the defendant Kusper, and he retained part of them for himself.

Generally, some of these commissions reached him by checks payable to cash or by cash, and it is alleged in here that as to those commissions, neither he nor these others reported them in their income tax returns.

Certainly, I don't intend to represent to your Honor that my man is without culpability here. He is, and I have never contended otherwise.

The Government knows our position and has always known it.

He was a dupe in a sense. He was stupid in another sense, and in some respects you can't justify some of the acts he did.

They don't deny, and it is undisputed in this record, that the Bureau, as a result of an investigation conducted beginning around 1950, forwarded this case to the Justice Department recommending the prosecution of only Mr. Marzec and charged to him all of these commissions.

That has two implications in law, your Honor. One is that he and he alone was the criminal in this case
7 from a criminal standpoint.

In addition thereto, as your Honor may well know,

there is always involved in these income tax cases also the question of a civil liability, and if successful in prosecuting this defendant and this defendant alone, as recommended by the Internal Revenue Service, it in effect meant that for all practical purposes, not only was the civil liability of these other defendants stifled, but in addition thereto—I mean the criminal liability—but in addition thereto, the civil liability, and I invite your Honor's attention, and I give you the cases where they hold that the evidence of a man's conviction in a original case is evidence of fraud, and if he had a civil case befor the Tax Court, and the Bureau, as they were determined to do, charged him with all of these commissions, he was a convicted felon, and these gentlemen would escape not only the civil, the criminal liability, but in addition thereto the civil liability.

I got into this case in 1953 when Mr. Rieger, whom I have known ever since I was in Sonnenschein Berkson's office back in 1928, and again when I was in the District Attorney's office and from then on, called me into it.

These problems were discussed, and they are practical, they are reasonable, and they are acute problems, tremendous problems from the standpoint of a defendant.

It was determined here to go to the Government and to advise the Government that we had in our possession facts and substantial facts, Judge, not any speculation or anything like that, to the effect that this man was, in a sense dupe; that the real culprits were these three individuals, and that under proper circumstances we would make available to the Government what information we had, fully cooperate with them, give them every necessary help we could give them and do anything they wanted us to do, testify on their behalf if they needed our testi-

mony, if they wanted to proceed as against these other defendants.

In addition thereto, this wasn't done as a matter of a day or a week. This was done as a matter, your Honor, I would say, from 1954, early in 1954 through and inclusive with the present time.

Most of our work, and there is no question about
9 it, was done primarily through the return of this indictment.

It started most basically, and I am willing to be sworn on anything I represent to this Court, with our position that not only has the prosecution of these other defendants been stifled in the Bureau, but that in effect and factually there was such a set of circumstances involved that this was a deliberate connivance, whatever you call it, conspiracy, between certain people in the Bureau and certain of these defendants.

I am willing to testify as to all the facts, and your Honor can evaluate them—but it was to stifle this prosecution and to load this whole thing onto my man.

We gave that information to the Government beginning in February of 1954, to the United States Attorney's office. They had great difficulty in getting the Government or the Bureau to do anything about it.

As a matter of fact, checking some of my notes, they denied certain facts which I had given the Bureau, purportedly represented to the United States Attorney that these other gentlemen had paid the taxes on this matter, and so forth and so on.

10 We couldn't get from the Bureau, your Honor, the very documents that they had taken from Mr. Marzec until arrangements had been made through a third party to get them for us, one of the brokers in this case. We are willing to testify to that.

To make a long story short, over a period of years they were going to write a letter to the Department of Justice to find out how to proceed, and I think in the summer of 1954 or 1956—and I think it was 1955—Mr. Kabaker, if he is in the room, did prepare such a letter. At least he told me he did.

I have no question of doubt that he did, and that it was to be signed by the then assistant United States attorney. The letter got lost.

In October of 1954, pursuant to conversations I had with an assistant United States attorney handling the case, and certain agents, I prepared, with the aid of a court reporter and after much investigation, lengthy statements of Mr. Marzec, one of 78 pages and another one that is 79 to 120, giving them all the detailed facts which we had assembled.

We hired an accountant and went over everything here and also have another witness here, 45 pages of the whole sordid picture back of how this money was distributed, what went on in connection with this man's investigation by the Bureau, covered the facts that some agent, one of the agents in the case, your Honor, ended up with some interest in a building, went to work for one of the brokers who, in turn, had some business with my client, and as of today, I was advised about three weeks ago that with all the facts about this agent in this building and the loan he made from this union, even as of today the Bureau has not completed that investigation.

In addition to that, I went away in December of 1955. My little girl had a baby down in Charleston, South Carolina, and we had information they were going to proceed, that the Bureau would not accept this information, that they were covering it up.

I asked Mr. Rieger to watch it in the meantime. He had certain conferences with Mr. Tieken when these facts were all brought out to his attention.

Upon my return I prepared a lengthy memorandum covering seven pages which I gave to Mr. Rieger, and he is here to testify as to what cooperation we had to give Mr. Tieken, what services we were to perform
12 for him, and generally, the information that I had accumulated over a period of approximately a year or two years.

This memorandum is here. It comprises ten pages just highlighting the information, and Mr. Tieken, over the opposition of the Bureau, ordered an investigation of this matter upon the information we had given him and such subsequent information as we got for him.

It took them from January or from sometime in January or February of 1955 until nearly December of 1955 to get together, check, verify what information we had given them.

I want to make this thing very clear to your Honor. I don't like to get in an argument with the Government as to what statements I made to them and as to what statements they made to me.

I am willing to get on the stand, cover the details of this entire situation with all the detailed facts, to the best of my recollection and give to your Honor every fact that I can remember about it, should your Honor decide that this is a factual question.

In addition thereto, I say here in frankness and candor that as far as I am concerned, I sought to make
13 it very clear to the Government from the very inception of this case, that my client was not without culpability, that there were others who were more culpable, that my job here was to get my client out of this matter,

and that as far as I could see, and had explained to him, that the only way he could get out of this matter was to fully and truthfully come forward, cooperate with the Government, give them all this information, and that he did give them all this information.

I will testify to that; I will verify it.

That is, in substance, my position in this case, and I don't think there is any question about this thing, that as far as I am concerned I had one motive in mind, primarily to give them all the facts, to show them there were far more guilty people involved here, that my man was the collector, and that he would testify for them and give them the facts.

There isn't any doubt from the questions they don't dispute, and they don't deny, your Honor, that this case came from the Bureau recommending only the prosecution of my man.

There isn't any question from their own admissions
14 and the facts they do not deny, that they had in the Bureau file nothing against these other people or their participation in these commissions.

In fact, your Honor, they had stuck in that Bureau file, evidence that these genelemen had not participated in these commissions, and there isn't any question of a doubt in this case that as this case was indicted, that the Government could not make out a case against these other defendants unless they had the testimony and further cooperation of Mr. Marzec, for the reasons that I have given your Honor in here and for practical reasons they have conceded.

I want to try to answer some of their allegations in their answer.

It was represented to this Court on January the 23rd by way of a motion, and again by way of representations

in open court, in effect that I had continuously represented to them that Mr. Marzec would be available as a witness to testify against these defendants, even if he was joined as a defendant, and they go even further in their answer and set forth that I told them that I would go along with their theory of the Beck case.

15 As your Honor may recall, in that case during the trial one of the defendants under Section 3781 voluntarily testified—I think he pled guilty and testified against the others.

There was a great cry it had ben unfair to the defendants' counsel, and our Court of Appeals said a man had that right to do it.

Now, this statement to that effect, your Honor, is to be balanced off as against what happened in this case last January. They admit here in their answer that at least from January 12, 1955, I had given them the authorities, some of which appear in here or all of them appear in here as to the immunity or equitable immunity which my client may have.

They say I said, "Anyhow, I will go along and won't say anything about this, and I will still come along at the end and plead guilty," and so forth and so on.

Their own statement to the Court on January the 23rd emphasizes the inaccuracy of that statement. Here is what Manion says:

"I will say for the record at this time that Mr. Struett has not represented to the United States
16 that he would permit us to call Mr. Marzec as a witness, or that he would make Mr. Marzec available to us if we were to try Mr. Marzec in advance of the other two defendants."

He implies otherwise in this so-called sworn answer of his, as though I had always told him that I would

go along with him until January the 14th. Then he says, and this is Mr. Manion:

"He has petitioned the court for a severance as Marzec, and to continue his trial until a later date."

He knew when I petitioned this Court it was in January of 1956. And he knew at that time that I wanted a severance for my man, and I wanted the case disposed of after he disposed of the other defendants, and that was essentially, your Honor, because he couldn't do it any other way and do it legally, as I will point out to you in a few minutes.

He concedes that fact, and I filed my motion for a severance, and as I point out in here; when this motion came up I stated to your Honor that the Government had all the facts.

The representation they made to this Court at that time, your Honor, was I think as Mr. Sokol here said
17 he understood Mr. Marzec was going to be a witness for the Government, and Mr. Reeb, who was then in here, said, "In substance, while Marzec might testify for the Government, that is his, Marzec's, problem.

That wasn't Marzec's problem at all, your Honor. That was the Government's problem to make clear to your Honor and to these other defendants just what the status of this case was and the statuts of this defendant.

That is, that they couldn't make out a case against these other defendants unless they had the benefit of Marzec's testimony; that Marzec's testimony was not only antagonistic to them, but that if your Honor proceeded in a joint trial here, that it would result in nothing but reversible error, and you would go through an abortive trial.

You couldn't escape that if the Haupt case is good law and Rules 13 and 14 mean anything.

They said it is the same evidence—it is the same evidence of the receipt of commissions, but to trace those commissions to these other individuals, they had to have the benefit of Marzec's testimony. They couldn't do it otherwise, and they don't deny it.

18 Now, then, I set forth by way of averments that continuously up to and including that day I tried to convey to the Government and get an expression of just exactly what they wanted to do in this case. I gave them cases where they couldn't try these cases jointly; I begged them to come in here and ask your Honor for a severance, and to explain this to your Honor. They refused to do anything. They kept saying to me: We are going to try these fellows jointly. They knew they couldn't do that.

Last October I discussed it with them and they said, "If we grant a severance we will try the Marzec case first."

I said to them it is not practicable, it is not legal, it is not feasible.

I never heard another word from them on that. They knew I never filed any motions and they knew I wouldn't be ready for trial February 4th.

I finally told them on January 18th, "I have got to know where I stand. I am going to prepare a motion and give the facts to Judge Barnes, and I am not going to be caught short on the matter.

19 Then they served me with notice of severance.

Could I have a glass of water?

(Short interruption.)

By Mr. Struett: May I go ahead, your Honor?

By The Court: Yes.

By Mr. Struett: Your Honor, we set up this affidavit that this motion was made in bad faith, and they denied it. In answer to Paragraph 6, "Government denies that motion for severance was made in bad faith, and further

denies it has at any time acted in bad faith as to the defendant Marzec or any other of the defendants in this cause."

Now, let's look at the facts. Taking the facts as I have given them to your Honor, and I am willing to substantiate them by sworn testimony, at the time they filed this motion they had the plea of Sobieraj; they had additional testimony, as they say, against Kusper and against Brandt. That is their statement to your Honor on the 23rd. They may have had under negotiation with Brandt evidence or leading up to a plea of guilt.

Probably they have not as yet completed their nego-
20 tiations one way or other with the defendant Kusper.

Now they come in and they represent to this Court on January 23 or they call your Honor's attention to to Section 3481, and then they say that they are going to call my client, and they said in effect he can furnish the only direct evidence against Kusper and Brandt, assuming they still don't have a side deal with Brandt, and then they want to try him first because then they can subpoena him, and because, "We wish no confusion in the record as to any possible equitable in so far as we can control it in relation to the defendant Marzec."

Now, Judge, they knew on their own admission, at least from January, 1956, that I was going to rely on these cases. They knew I had filed a petition for severance, and they knew I would not go along with it and would not waive the rights of my client, and then they come along here and try to euchre me and then they come in at the last minute after they have had four months to tell me what they wanted to do, after they have had plenty of time, and they say, "Now we are going to take

Struett's client first." They knew we were not ready
21 for trial. If they want to operate that way they can operate that way. That is the sum and substance of

this matter. I made a deal with these people. It doesn't have to be in writing or it doesn't have to be under seal. We were ready to cooperate with them, and they were to avail themselves of our cooperation to get these other people. I expected my client to conform, and he would have. They played my client along and then when they get pleas they say, "We haven't a deal with Struett at all. He has known about this thing all this time." That is the way they want to operate.

Judge, that leads you back now, in all sincerity, to the problem we had in the case where they filed briefs in my absence, and then when we were ready finally they dismissed. That is the same thing as in the Goldberg case. They assured Judge Hoffman if he advised dismissal they would dismiss it. They then asked for an examination of Goldberg and a sealed report of the Government's evidence, and then they came in and said they wouldn't dismiss it and they ended up by trying Goldberg while he was in the hospital.

I can't deal with these people.

22 Your Honor, I am ready to testify that I am not ready for trial here. As I say here, I have tried to make my position clear. They were trying to euchre me, do this, to do that. They brought it right up to this point, and I explained this situation, and I am willing to stand on that.

They gave me the same act they give everybody. If we dismiss one count will you plead guilty? The records of this court shows that one time when a man would not plead guilty they filed another case against him.

That is not the case here. I gave them a lot, I gave them the law on this. I said, "You can't bind Judge Barnes as to what disposition he is going to make of the case, I can't bind Judge Barnes as to what disposition he is going to make of a case."

I said, "If you are going to ask me to plead guilty you have got to give me sufficient assurances, and they have a right to do it, and I can give your Honor the law on it because I have been through that, and if Judge Barnes doesn't want to follow your recommendation he won't.

I have the law on it.

23 Well, you know how it ended up. We can't do this; you go down and see Judge Barnes. I said, "You make your own arrangements. If all the counsel are there we will come down and talk to him."

Then they imply here I was ready to plead guilty.

The courts have been very indulgent to me. I apprecite what you did last year, your Honor. I want to leave here March 20th, your Honor. I have got my tickets. I am kind of in the middle. I started making the arrangements last August, and I didn't know whether I was going when we had the Near East problem, and they don't know today whether they are going into Suez Canal. I have a right to cancel up until March 1st. I have got my money up. I still may be able to go around the Cape. So there may be no misrepresentation, I am trying to get everything straightened out. I represented here when this went to the printers that I had a case and was expecting an opinion every day. I think I have got that straightened up so that won't come up until I get back in July. I won't bother you with the details.

24 Also there is another case that broke where I have got to prepare a petition in the Tax Court. I thought I had an understanding with my client where they made the jeopardy and they picked up the mortgage, and then Friday we get a letter back that the director in Los Angeles agrees with everything I say except the director here cannot bind him. I have a motion to file a petition to set that aside.

Then I have got a case I am trying to dispose of before I go away. That is my problem, of course. I am not ready here. I have given your Honor the facts. I think I can get rid of this case with some time to work.

They went ahead with the Kotelin case. If they had given the people time they might have gotten rid of it. Then they went ahead with the Goldberg case. Then there was pretty much the same situation in the Crowley case.

If we have this implied doctrine of immunity to consider, I want to say this to your Honor: If they are playing both ends against the middle, and seeing if they can come out with these other fellows, see how they come out, then they may want to throw my guy in the bushes. Then it may be in their zeal to punish this man, they might dismiss against Kusper. I don't know. I wouldn't speculate what they would do today or tomorrow. I am willing to testify to it and am willing to put other witnesses on the stand to say what the discussions were with the Government. I don't think they have made an issue here. I think under a fair deal there is no question this case was pending and we didn't know a year and a half ago what would happen, and it took them seven months to get what we gave them. There is no question at all about our job. We will carry out our obligation. That is all about my position.

I ask here in all sincerity that the United States Attorney be required to admit in open court or produce the facts that we gave him that this man was framed within the Bureau. That is certainly inadmissible, but they have got the facts, and they have got a lot more facts. I don't know how much more they have now covered. I will give you an illustration of that. When

I first went to them they had somewhere in the Bureau a case against Mr. Kusper that involved some of these years. They also supposedly had information in a
26 case against, to the best of our information—what is the name of that fellow? Not Kasur, but they had an affidavit that Kasur had paid Brandt in cash, and that there was an affidavit in existence on that thing.

Then they said they had no such affidavit, and maybe by now they have found out what that is. I don't know how much they have uncovered here. They obviously have not uncovered anything. It is all admissible, certainly on the matter of intent.

If the Lustig case means anything and these other cases mean anything—well, it has got to mean something. The court put this man to trial.

I have got another motion, and I think it is as sound as the Rock of Gibraltar. I filed it in the Achille case. The court denied it. It is lengthy and it is documented from every source I could get information from and, as I set forth in my petition, the very foundation of these income tax transactions is the determination of the Bureau of Internal Revenue to prosecute certain persons. If you remember that case—what is that case that was overruled, the O'Brien case?
27 Mr. Chief Justice—who was that, Justice Robin? —said the Bureau has given over various sanctions to meet every degree of flagrancy, the capstone of which was 145-B. That can mean one thing, Judge, that these various sanctions, civil and criminal, have got to be applied fairly and equally. You can't throw the kitchen sink in on that, and then when you settle with him on the negligence penalty, or indict him for fraud, set up these fraud penalties against him, and have the other settle for negligence, the other fellow settle for negligence. That is a government of men and not of law.

I take it out of the report of the American Bar Association. See what happens. See what happens here. They simply stifle the prosecution of these other chaps and load it on my fellow.

Whatever additional proofs you want or whatever evidence you want, I am ready to offer it.

28 By the Court: Take about a five minute recess.

(Thereupon a short recess was taken.)

By the Court: Proceed.

By Mr. Manion: May it please the Court, the Government has pending at this time a motion to strike the brief filed by Mr. Struett in behalf of his client Joseph Marsec in support of the motions now pending before the Court from the defendant Marsec for vacation of the order entered January 23rd, and the motion for continuance and other relief.

The reason we ask the Court to strike that brief is in the opinion of the Government the brief is scandalous, and it contains allegations either directly or inferentially which are not true and which are not supported in the brief, and which cannot be supported by facts.

After listening to Mr. Struett talk for some length of time, I think it is best to return for the moment to the three issues which Mr. Struett said were pending before the Court on the motions, and I believe that all those three issues can be disposed of simply on the law.

First, his issue was whether the Court would
29 proceed to try Marsec, the defendant Marsec, before the defendant Kusper.

It is the position of the United States Attorney that where a severance has been granted between multiple defendants or multiple counts of an indictment, it is a matter completely within the discretion of the court and the United States Attorney as to the order in which defendants or counts will be tried.

We believe that issue has already been taken care of by the Court in its ruling on the 23rd of January, at which time the United States advised the Court of its election to proceed first as to Marzec and requested the Court to try Marzec first.

In passing, I would say there was no advancement of Mr. Marzec's case. The case was set for February the 4th, 1957, since sometime in December, and the early February date was selected at the request of Mr. Struett because of this world cruise he has told you about.

We all knew about it, and frankly, the Government desired a later trial date than today, but because of Mr. Struett's proposed trip, it was agreed among the attorneys for all the defendants, as well as the United States Attorney, to proceed on February the 4th.

The second issue was whether Marzec is entitled to a continuance in order to apply to the Executive Department for pardon.

I believe I can rely entirely upon the cases which Mr. Struett cited in his brief in answering that portion or that issue proposed by him.

Our circuit in the case of the United States vs. Shotwell, 225 F. 2d, 394, at page 397 has clearly ruled that the defendant is not entitled to a dismissal of an indictment or to a continuance by way of a plea in bar because of any arrangement, real or imaginary, made with the District Attorney as to immunity in the case.

Such a motion was made by the defendant Shotwell Manufacturing Company in that case and was denied by the Circuit Court of Appeals, and the court said at page 397:

> "The trial court was correct in denying defendant's two motions to dismiss the indictment, in the nature of special pleas in bar. These motions were based on the theory that defendants had acquired

31 immunity from criminal prosecution by making a voluntary disclosure, in reliance upon an announced policy of the Treasury Department not to prosecute in cases where such a disclosure had been made.

"There was no statutory basis for the alleged promises of immunity announced by the various Treasury Department officials. Thus the making of a voluntary disclosure by the defendants was no legal bar to a criminal prosecution."

In that case the defendants were relying on the voluntary disclosure policy which although not a statutory thing, has nevertheless been very real and has been relied upon by defendants and has been honored by the United States Attorney.

In this case we don't have evidence of voluntary disclosure. Mr. Struett contends arrangements were made with the United States Attorney, but even if such arrangements were made, it wouldn't entitle him to a dismissal or continuance in this matter.

We believe the decision in King vs. The United States, the Court of Appeals for the Eighth Circuit, decided
32 in 1953, 203 F. 2d 525, at 526 is controlling in this instance.

In that case the court said:

"If, however, it could be thought on the basis of the discussion in the Whiskey cases—"

which have been cited by Mr. Struett—

"that some trace of that concept may have existed in the Federal Court system in the past, we are satisfied that there is no vestige of it remaining, or having any reason to remain, since the enactment of the Federal Probation Act."

Continuing, the court said:

"We do not of course mean that this grant of judicial authority has any relationship to or effect

upon the executive prerogative of pardon, but it has at least not left any need surviving, in the interests of justice, for judicial concern or endeavor to have a confessed violator resort to that process as the only means available to enable him to escape being
33 subjected to punishment."

Under the law, clearly Mr. Struett is not entitled to a continuance on the grounds stated by him.

The third issue is whether Marzec is entitled to a continuance in order to file additional motions in this case.

This matter was originally set for trial, your Honor in February of 1956. At that time it was set for a May date.

It was reset in May until an early fall date, and then was reset again in the summer until the first of December, if my memory serves me correctly, and reset by Judge Campbell in your Honor's absence, to a January date, and reset by you on your return to the bench as of today, February the 4th.

In all that period of time, this matter for almost a year now has been set for trial, and if Mr. Struett desired to file any motions, he has had more than an adequate opportunity to file any sort of motion he might have cared to make in this case.

Therefore, we urge the Court that that itself does not constitute a valid ground for continuance in
34 this matter.

Mr. Struett has made a lot of charges and accusations here as to the conduct of the office of the United States Attorney and as to the Internal Revenue Service.

We deny any mal practice, either in the United States Attorney's office, or, to our knowledge, in the Internal Revenue Service.

Mr. Struett has said that on the one hand his client, the defendant Joseph Marzec, alone had the information which would indicate the culpability of the remaining defendants in this case, and on the other hand he states that the Internal Revenue Service did not carry forward with an examination to determine the culpability of those people.

That is a fact question, your Honor, and we submit that the statements of Mr. Marzec in which he denied receiving any of this money estopped any further procedure by the Internal Revenue Service on the basis of Mr. Struett's own statements.

With regard to his negotiations with the United States Attorney's office, we would advise the Court at this time that to the best of our knowledge the people who conducted negotiations with Mr. Struett in this case at one time or another, Mr. Tieken himself, Mr. Joseph Tobin, Mr. William Reeb, who is no longer with the office, with the firm of Bell, Boyd, Marshall & Lloyd, myself and possibly Mr. Neal Kennedy who has left the office and returned to private practice with the firm of Myer Friedlund—that we feel some of Struett's allegations are extremely serious.

They do, however, constitute a side issue in this case, and for that reason we are reluctant to get into a quarrel with him about what was said by him about whom and to whom, what was said or not said.

If the Court decides to proceed to determine the factual statements, the accuracy, the United States Attorney is available to cooporate, including the testimony of any of the assistants named and myself or any others Mr. Struett desires to call into this matter.

We would represent to the Court in complete candor that when Mr. Struett first approached the United States Attorney's office in this matter, he advised the United

States Attorney's office that his man was not the
36 sole culprit in this particular series of transactions,
and he continued these overtures over a period of time, primarily with negotiations had with Mr. Tobin.

In the fall of 1954, if my memory serves me correctly, the case was reassigned to Mr. Reeb. At that time a conference was had in the office of the United States Attorney, at which time Mr. Struett offered to a representative of the United States Attorney and a representative of the Internal Revenue Service certain transcribed statements, not under oath, taken by Mr. Struett of his client, Mr. Marzec, and at that time the representatives of the Government made it very clear to Mr. Struett and to Mr. Marzec that the Government was not interested in obtaining any evidence from Mr. Marzec unless it was clearly understood that Mr. Marzec was being offered no immunity and no consideration other than such consideration as the Court might seek to give him at the ultimate disposition of this case.

He has referred to possible deals made with the other defendants and other defense attorneys. All the other
defendants have been in the court room, and for all
37 I know they are still here, and I believe the other
defense attorneys in this matter are also here, and the only deal made with any of these people was the dismissal of the one count of the indictment as to the defendant Brandt, when he pleaded guilty to the other, and the dismissal of one count of the indictment with the defendant Sobieraj when he pleaded guilty to the other.

That is the same suggestion we have made to counsel representing the defendant Marzec at all times during the course of this case.

With regard to some of the statements made by myself on the 23rd of January, when our motion for sever-

ance came on for a hearing, and some of the representations in our answer, which we filed this morning, Mr. Struett would have the Court believe that the United States Attorney knew all along that the defendant Marzec would not testify unless he was severed from the others and tried subsequently to the others.

We respectfully submit to this Court we did not know anything of the kind until January the 14th, 1957, when, for the first time, I was told flatly by Mr. Struett that Marzec would not testify as long as he remained
38 joined with the others for trial, and would not testify unless his trial was postponed to follow the trial of the other three defendants.

Prior to that time, it is true that on or about January the 12th for the first time Mr. Struett made it known to the United States Attorney that if his man was used as a witness or called by the United States Attorney or by the Government as a witness as against the other defendants, that he might claim immunity.

I read from Mr. Struett's letter to Mr. Tieken as of January 12, 1956:

> "Should your officer desire such cooperation and should your office avail itself of Mr. Marzec's testimony as against the other defendants, it may well be that there is an implied promise of immunity."

Then I invite your attention to a list of cases, the Whiskey cases and several others.

Mr. Reeb had the case at that time, and Mr. Reeb discussed these cases with Mr. Struett and told him we did not think the cases held as he had cited them and we did not agree with his position.

39 On the 23rd of January, a few days or almost two weeks following the date of this letter, several motions for severance came up for hearing in this court room, and Mr. Reeb advised the defendant in the court

room at that time we did not agree with the motions and the Government would resist the motions for severance and the Government would proceed for trial as to the defendant Marzec in the first instance.

It very well may be that Mr. Struett had too much confidence in his own persuasiveness in discussing this matter with the United States Attorney. He has tried to tell us how to try this case, and he has tried to tell us what is and what is not the law either on a joint trial or on a straight trial.

We have not agreed with everything Mr. Struett has said, and it may be that Mr. Struett feels because he had said it, that we would believe it and act upon it.

If he has been misled, he has been misled only by himself.

He says he is not prepared for trial as of today. I do not know whether that is or is not the fact, but I do know the United States Attorney and his representatives have at no time done anything in leading Mr. Struett to think that he did not have to prepare for trial in this matter.

Throughout the fall of 1956, and particularly in December of 1956 and in the early part of January, 1957, I had repeated discussions with Mr. Struett with regard to the procedure in this matter, and at all times advised Mr. Struett that we saw one of three options available to his client; that either he could refuse to testify at all, he could plead guilty to one count of the indictment and we would dismiss the other count, or, if he chose to do so, he could volunteer to testify in the course of the Government's trial as to the other defendants.

We have never told him we would agree to sever his case and try him subsequently, and we have never said or done anything to lead him to think we would follow such a course of action in this case.

The doctrine of approvement seems to be primarily what Mr. Struett is relying on at this time.

As I attempted to point out, the doctrine of approvement is when our judgment no longer exists in this
41 country, if it in fact ever did exist.

If the United States Attorney or any of his assistants had at any time suggested to Mr. Struett or to his client or to other counsel representing the defendant Marzec that we would not prosecute Mr. Marzec in return for his testimony as to the other defendants, we would feel, although not legally bound, morally obligated to adhere to such a representation if, in fact, it had been made, but the fact is the defendant Marzec, through his multiple counsel, has repeatedly attempted to get such a representation from our office, and we have resolutely refused to give it to him.

Mr. Marzec has appeared and testified before the Grand Jury in this matter. His testimony given at that time was given at the request of his attorneys. The questions asked Mr. Marzec were screened and considered before he appeared before the Grand Jury, and they were very carefully framed not to incriminate Mr. Marzec any further than necessary, and if the Court desires, we will be glad, if the Court wants to open up the Grand Jury transcript
42 of Mr. Marzec's testimony, we will be glad to do so.

Most of what Mr. Struett has said this afternoon we feel is not pertinent, germane or a real issue in this case.

However, in so far as some of his charges in their ultimate application would involve either malpractice or false representations by the United States Attorney or abuse of their fiduciary trust placed in the offices of the Revenue Service, if the Court desires to go into these matters, we will be more than glad to meet Mr. Struett on these grounds.

These issues are not germane to the Marzec case and should not control at this time.

If the Court does not see fit to grant the Government's motion to strike the brief in support of the motions for continuance and for vacation of the order of January the 23rd, then in the alternative, we would ask leave of the Court for leave to file a brief within a reasonable time, either after the disposition of this case or at such other time, if a continuance is granted.

Thank you, sir.

43 Mr. Struett: I realize it burdens your Honor a great deal, and I want to make it very short. He talks about the Government, or he talks about that case, the King case. He doesn't tell your Honor the party who gave him the King case, Mr. Struett, about six months ago, and then because I told him I couldn't plead guilty, and if you read those cases carefully you will see that in the end they resulted in a nolle contendre.

There was recommended in the Shotwell case, and other cases, by way of a plea of bar. You have got it raised, you have got to raise it by assuming it was good or bad, by a motion pending, by an application of executive clemency.

Now, as far as these charges which I make against them is concerned, he has brought it out and said he had conferences with Mr. Tieken, or I had. Judge, I didn't have any conferences with Mr. Tieken. I was away sick, as I told you. Let me tell you what happened over at the Bureau of Internal Revenue, in the presence of Mr. Tieken, and how he stood up there and said, "We have got these affidavits, and there is no reason to indict these other people." The fact is the proof of the

44 pudding is in the eating. Through our efforts and our efforts alone they got these facts which enabled them to bring these other defendants into this case, and

only through Marzec's testimony. That is the only way they could get any evidence. If they want to concede that, Struett said, "Here, boys, take your cake and eat it too. You have got no obligation," well, I was willing to give them the cooperation they needed. That is what went on in this Bureau.

I said that sincerely, to get away from an argument of what I conceded, what I said and what you said. If they had this cooperation they couldn't come in with one case and tell you where it didn't come directly from Marzec, directly or otherwise. They had nothing here. The law sets up this arrangement. Do you want to use it? They said many things.

I am not here to apologize for any representations I made, if your Honor goes on and gets Mr. Tieken in to testify to exactly what went on in his office too. Don't forget, they had the applications of affidavits in their files here. I talked to my client, and he has no recollection of their ever having asked him if he shared these with anybody. If that is true then how would that end up, with affidavits from Brandt, one from Sobieraj. They had no reason to do this.

Your Honor, I say to you frankly I am not ready. Maybe I am derelict in my duties, maybe I am not. I think I have some rights. When we get up here and they start producing what they have and what their files show on this thing it will be a revelation, whether or not these remarks of mine are scurrilous and scandalous.

I thank you very much, sir.

By the Court: I have read Mr. Struett's motion and affidavit last week. I have not yet had the opportunity to read the Government's answer. I will do that.

At this moment, if you will bear with me a few minutes.

(Thereupon a brief recess was taken.)

By the Court: I understand there are two motions here upon behalf of the defendant Marzec. The order rendered on the motions of the defendant to vacate the order entered January 23, 1957, directing that the trial of the defendant Marzec proceed before the trial of
46 the other defendants, and a motion for continuance and other relief, as it is phrased here.

On page 7 of his motion the defendant says:

"Now comes the defendant Joseph T. Marzec by Joseph A. Struett, his attorney, and moves for a continuance and postponement of the time of trial of this defendant to a date following the disposition of the cases against the other defendants herein, and until action is taken by the Government to accord to this defendant his right to executive clemency and has moved for a dismissal of the indictment against him, on the basis of the agreement on behalf of this defendant with the United States Attorney, as set forth in the foregoing motion, and in the light of the affidavits set forth in the brief filed in support of this and the foregoing motion, and moves for such other and further relief as this Court may deem proper under the circumstances of this case.

"In the event that the foregoing motion of this defendant, set forth immediately above, is denied,
47 defendant moves for a continuance and postponement of the trial of his case from February 4, 1957, to a date in the September 1957 term of this Court, and in support of this motion, states that the Government's concededly sudden and dramatic change of position in disavowing its obligation to this defendant under its agreement, as aforesaid, and in putting him to trial, and in doing so first, before the trial of other defendants, has taken this defendant's

counsel by surprise, without adequate time to recast and develop a defense and prepare and present pretrial motions necessary if he is to go to trial, and to prepare and present evidence at such trial, none of which work and preparation was contemplated or performed while said agreement with the United States Attorney appeared to be honored by him."

The indictment in this case was returned on December 15, 1955. Mr. Marzec filed his appearance upon the following day, December 16, 1955, and counsel for the defendant Marzec entered his appearance on the
48 same date. As early as January 23, 1956 an order was made by the Court denying the motion of Mr. Marzec for severance, and for separate trial.

On February 20, 1956, Mr. Marzec entered a plea of not guilty. The case was set for trial May 21, 1956.

On December 5, 1956 by agreement the cause was continued for trial from January 9, 1957 to February 4, 1957. I think it is a fact that the date of February 4, 1957 was fixed because counsel for Mr. Marzec indicated he contemplated a vacation trip of some sort at a somewhat later date.

49 I don't think any adequate reason has been set forth for a continuance. The case has been standing on a plea of not guilty for almost eleven months, all of eleven months.

The plea of not guilty was entered on February the 20th, 1956—twelve months, all but sixteen days, ago, and such preparations as were necessary to be made should have been made during this interval.

Accordingly, the motion for continuance, for whatsoever purpose, will be denied. The motion to strike the petition will be overruled. You may go to trial now, gentlemen.

Bring in the jury.

By Mr. Strnett: If your Honor please, might I make some motions now outside the presence of the jury so we can determine the things necessary before we go? If we could do that today without starting the jury, I would appreciate it.

By the Court: Go ahead and make your motion.

By Mr. Strnett: If your Honor please, I assume, and I just want to protect my record, that I think if we do it first it may save us a lot of trouble; but I would like to make a motion that as to my motion for a continuance pending executive clemency, my application for executive clemency, its denial, that all my further acts as I set forth in my petition are reserving to me that motion, and nothing is to be construed as a waiver thereof. I ask that specifically.

By the Court: You have such rights as the law gives you, and you have all of them, and they will all be accorded to you.

If you don't have them, you don't have them, and if you have them, you have them.

By Mr. Strnett: If your Honor please, I have given consideration to discovery, and I would like to ask that the Government make available to me every bit of evidence that they had or concede that they had no evidence against these other people until—

By the Court: I am not going to spend any time with that.

By Mr. Strnett: It is material on the question of intent, your Honor. I have given them all my evidence months ago.

By the Court: When the case is ready for trial, it is ready for trial. Bring in the jury.

By Mr. Strnett: I lost a friend of mine this morning. I would like to go.

By the Court: Bring in the jury.

(And thereupon the Court gave his attention to other matters upon the call, after which the following further proceedings were had herein:—)

(Voir dire examination of prospective jurors follows; reported, but not here transcribed.)

52

United States of America
Northern District of Illinois
Eastern Division

IN THE UNITED STATES DISTRICT COURT

• • (Caption—No. 55 CR 679) • •

CERTIFICATE

I hereby certify that the above and foregoing transcript comprising pages numbered consecutively from 1 to 51 is a full, true and accurate transcript of the original shorthand notes of February 4, 1957 prior to the voir dire examination of prospective jurors in said cause, before the Honorable John P. Barnes, Chief Judge of said Court.

/s/ Roy E. Fuller
Roy E. Fuller
Official Court Reporter
United States District Court
Northern District of Illinois

March 6, 1957

1

United States of America
Northern District of Illinois
Eastern Division

IN THE UNITED STATES DISTRICT COURT

• • (Caption—No. 55 CR 679) • •

TRANSCRIPT OF PROCEEDINGS

had in the above-entitled cause before the Honorable John P. Barnes, Chief Judge of said Court, and a jury, in his court room in the United States Court House at Chicago, Illinois, beginning on Monday, February 4, 1957, at 4:00 o'clock p. m.

Appearances:

Hon. Robert Tieken, United States Attorney,
(450 U. S. Court House, Chicago 4, Ill.),
represented by
Albert F. Manion, Esq.,
on behalf of the Government;

Joseph A. Struett, Esq.,
(105 W. Madison St., Chicago 2, Ill.).
on behalf of the Defendant.

2 And thereupon the following proceedings were had herein:—

(Voir dire examination of prospective jurors; reported but not transcribed.)

(And thereupon at 4:30 o'clock p. m. an adjournment was taken until the following day, Tuesday, February 5, 1957, at the hour of 10:00 o'clock a. m.)

3

(Caption—No. 55 CR 679)

Chicago, Illinois,
Tuesday, February 5, 1957,
10:00 o'clock a. m.

Court convened pursuant to adjournment.

Present:
Mr. Manion
Mr. Struett

And thereupon the following further proceedings were had herein:—

4 (Voir dire examination of prospective jurors, continued; reported but not transcribed.)

And thereupon a jury, including two alternate jurors, was duly empaneled and sworn to try the issues herein.

5 And thereupon Mr. Manion addressed the Court and Jury in opening statement on behalf of the Government.

By Mr. Manion: Ladies and gentlemen, at this time as Assistant United States Attorney charged with the presentation of this case on behalf of the Government, it is my obligation to you make a brief opening statement of what we expect the evidence to show in the course of the trial on behalf of the Government.

Briefly stated, as Judge Barnes, I believe advised you yesterday, you are charged here with the trial of Counts 7 and 8 of this indictment which relate to the defendant Mr. Joseph Marzec who was introduced and identified to you yesterday.

The February 1955 Grand Jury has charged in Count 7 that on or about the 15th day of March, 1950, in the

Northern District of Illinois, Eastern Division, Joseph T. Marzec and his wife filed a joint tax return to the Collector of Internal Revenue for the First Collection District of Illinois in Chicago, Illinois, and that Mr.
Marzec by filing that return wilfully and knowingly
6 attempted to evade and defeat a large part of the
income tax due and owing from him and his wife, and the return reported a net joint income in the amount of $10,789.43, and the amount of tax due and owing thereon was the sum of $1,397.64, whereas, as the defendant then and there well knew, he had received during the calendar year of 1949 his share of income resulting from a joint venture conducted by and between himself, Frank A. Brandt, Stanley T. Kusper, Bruno L. Sobieraj, and that the additional income resulting from that joint venture has not been reported, and that, as a matter of fact, the correct income for himself as reported by his return, should have been the sum of $19,830.7[illegible], and that the tax due and owing thereon was $3,658.16.

Count 8 is alike Count 7, except that it relates to the calendar year of 1950, and it alleges that Mr. Marzec attempted to wilfully and knowingly evade and defeat his income taxes for the calendar year of 1950 by filing on March 15, 1951, a tax return in which he reported his joint income, together with his wife, in the sum of
$23,881.79, with a tax due and owing thereon of
7 $5,077.72, whereas he then and there well knew his
joint net income for such year had been the sum of $65,593.67, upon which said net income was owing to the United States an income tax in the sum of $25,423.86.

The Government, in the proof of its case, has the obligation, as the Court has told you, to prove our case beyond a reasonable doubt.

There are two elements which we must establish. First, that there was a tax deficiency, that the additional tax

was due and owing for each of the years in question from the defendant Marzec.

Secondly, we must prove to you there was a wilful attempt to evade and defeat taxes on the part of Mr. Marzec.

We believe the evidence will show, as it comes before you, that during the calendar years 1949 and 1950 Mr. Marzec was employed as an auditor in the auditor's office of the Polish Roman Catholic Union, which is a fraternal life insurance organization with offices on Milwaukee Avenue, and during the same years Mr. Marzec was also licensed as a real estate broker, and we believe the evidence will show during the calendar years of
8 1949 and 1950, Mr. Marzec received substantial commissions, some in cash, some in check paid by various real estate or mortgage brokers in the City of Chicago which were paid directly or indirectly to him by these real estate and mortgage brokers.

These commissions received by him were reported only in part on his tax return, and the substantial portion of these commissions were received and not reflected in his records and were not reported in his tax returns for the two years of 1949 and 1950.

We will call as our witnesses real estate brokers who will testify as to the commission payments made to Mr. Marzec during the years of 1949 and 1950, and we will also call various agents of the Internal Revenue Service who have conducted the investigation in this case, who have examined some of Mr. Marzec's documents, who have taken statements from Mr. Marzec.

Thank you, your Honor.

9 And thereupon Mr. Struett addressed the Court and Jury in opening statement on behalf of defendant Joseph T. Marzec.

By Mr. Struett: May it please your Honor.

By the Court: Mr. Struett.

By Mr. Struett: Ladies and genetlemen of the jury: It is regrettable that I have to take up more of your time to give you a few additional facts which the Government has had in their possession for a number of years.

Now, Mr. Marzec, as he states, was an employee of the Union. They received certain commissions. They were received by Mr. Marzec and they were distributed by him to certain other people, and the Government has sought to charge all of those commissions to Mr. Marzec.

By Mr. Manion: I object.

By Mr. Struett: I have got a right to develop my defense.

By the Court: You are going to prove that, are you, your statement?

By Mr. Struett: Yes, I am going to prove that, your Honor.

By the Court: Just what you expect to prove.

By Mr. Struett: Now, he was an employee there. Money that he received from these brokers, it was arranged that he should get it through others. He distributed most of it. There is no question some of this cash he didn't report. There isn't going to be any argument about it, as far as we are concerned. The Government has the facts. He distributed most of it to certain other people, particularly Mr. Brandt, Mr. Kusper, and Mr. Sobieraj.

Now, at the beginning of the investigation—you are dealing here with a question of distribution. He was assured that these people with friends in the Bureau could effect a full settlement of this case, that he had nothing to worry about, that they would take care of it.

By Mr. Manion: Your Honor, I object to this as not germane to the issues.

By the Court: Sustained.

By Mr. Struett: If your Honor please, I would like to be heard on this. This is my whole defense.

By the Court: Step into the jury room, ladies and gentlemen.

(Whereupon the following proceedings were had
11 in open court out of the presence and hearing of the jury:)

By the Court: Will you read me the last few words?

(Thereupon the record was read as above recorded.)

By the Court: You intend to prove that?

By Mr. Struett: I intend to prove that. Immediately when the agents came out there they represented to this man that they had friends in the Bureau, that they would be able to effect a civil settlement of this case, that they then obtained for him a lawyer, that they then obtained an accountant for him.

I want to develop exactly what that accountant did. For instance, on the accounting—

By the Court: Who did this, the agents or the other defendants?

By Mr. Struett: The other defendants. I want to show the relationship of the parties here.

By the Court: Go ahead. What else?

By Mr. Struett: All right. Now, as far as the accounting was concerned, your Honor, this man got a 1099.
12 You know what that is. That is a report of the taxpayer that he paid somebody else some moneys, and then it is sent to the Bureau and is sent to the recipient of the moneys.

He prepared for him a letter to the taxpayer that he hadn't received it, that this man did sign, then he wrote the Bureau that the man hadn't seen it; then he took

them in before the agents and had him deny he received it, and then he had him sign a return admitting that he received it. Now, in addition thereto—

By the Court: Now, who hired him?

By Mr. Struett: This accountant was hired on the suggestion of the lawyer.

By the Court: Well, what lawyer, whose lawyer?

By Mr. Struett: Marzec's lawyer. Marzec's lawyer was recommended to him by one of these brokers, and approved by these other defendants.

That is my position. This man never had counsel in this case.

By the Court: I guess I will let you prove what you say you are going to prove.

By Mr. Struett: All right.

By Mr. Manion: Your Honor, we will object to
13 all this, which is not germane to the issue, which is the intent of the man.

The things Mr. Struett talks about all happened post facto, after.

By the Court: Bring in the jury.

You are sure you want to prove all that?

By Mr. Struett: Judge, my man is under oath.

By the Court: Do you want to prove it?

By Mr. Struett: Yes, I am going to prove it. Well, I can't do otherwise.

By the Court: All right.

(Whereupon a brief recess was taken, after which the following further proceedings were had in open court in the hearing and presence of the jury:—)

14 By the Court: Proceed.

By Mr. Struett: As I stated last, they had friends within the Bureau, that they could settle this case civilly. I want to clear that up in your mind just so you understand it.

You have all heard of the Bureau of Internal Revenue. That is an administrative agency of our government charged with the duty of collecting taxes, and they have a force of collectors, investigators, and so forth and so on.

They conduct investigations of taxpayers, whether they paid their true taxes.

They have agents, revenue agents, and in those days they had two types of agents, revenue agents, and what are known as special agents.

If there is fraud involved, the revenue agent would call in a special agent. Then if the Bureau determined to prosecute a man, the law provides various penalties, called sanctions.

There is a civil penalty, a negligence penalty for failure to file taxes, and a fraud penalty, and fifty per cent of your taxes. Those are civil penalties, civil sanctions.

Then the law has innumerable criminal sanctions involved here for attempting to defeat and evade taxes. That is a crime—filing a false statement is a crime.

If the Bureau determines to apply the criminal sanctions, they forward that case to the Justice Department with its recommendation, the Bureau's recommendation that a certain individual be prosecuted for attempting to defeat and evade his taxes.

Once they do that, they don't proceed with the civil aspects of the case, that is the civil liability until after the criminal case is disposed of.

By Mr. Manion: Again, your Honor, I must object to the relevancy of all of this.

By the Court: I don't see the relevancy. Can't you tell us what your defense is?

By Mr. Struett: It is all part of my defense, your Honor.

By the Court: Make it as brief as you can.

By Mr. Struett: All right.

During the course of this investigation, they ob-
16 tained for this man a lawyer, and—

By the Court: By "they", you mean whom?

By Mr. Struett: The defendants primarily through one of these brokers.

By the Court: Name them so we will know.

By the Struett: The defendants Brandt, Sobieraj, Kusper was really done in effect through one of the brokers who was recommended, who was dealing with this Union, and this lawyer was supposed to take care of this case, assured this man he could civilly settle it.

He in turn obtained an accountant for this man. The accountant advised him to do certain things.

I will give you an illustration of what the accountant advised him to do. Mr. Marzec received from one of the brokers, who paid in these commissions, a form 1099. That is a notice from the broker to the Bureau that he had paid Mr. Marzec some commissions.

The accountant had Mr. Marzec write and did write for Mr. Marzec a letter to the Bureau to the effect that he had not received these commissions, and then had him write a letter to the Bureau that he hadn't received
17 it, and later on had Mr. Marzec file an amended return that he did receive it, an amended income tax return that he did receive it.

As to the lawyer, he appeared at one hearing for Mr. Marzec in the Bureau, and at that time when Mr. Marzec was confronted with the various commissions he had received, the lawyer told him he would do all the talking and then the lawyer said, "Mr. Marzec lied to me."

Then he found out, he was advised that these other defendants, that the agents had procured from them affidavits that they had received no part of these com-

missions, and unknown to Mr. Marzec they had not talked to him about how he distributed this amount of money, but they went out to these other three gentlemen and procured from them affidavits in substance they had not shared in these commissions.

By Mr. Manion: Your Honor, again I object. None of this goes to the intent of Mr. Marzec at the time he filed his tax returns.

By the Court: I don't see it. I don't want to limit you, but I don't see how it has to do with the intent in which he made his tax returns.

18 By Mr. Struett: May I proceed? I will make it short, your Honor.

By the Court: All right.

By Mr. Struett: Once the case was in the United States Attorney's office, he employed other counsel. He made a complete disclosure of everything that had happened, put his accountants to work, and everything else, and it was only through his efforts that these other defendants here were brought to the bar of justice and convicted.

In that same connection we will show that one of these agents worked on this case, that the lawyer who was supposed to represent Marzec came and wanted a loan from this Union, and later on Mr. Marzec found out that the agent had an interest or was making the payments on that loan.

There is a mass of detail here, but I say to you all of these facts were made available to the Government, and it was largely through the actions of Mr. Marzec, and much expense to him, that the people who received most of these commissions were brought to the bar of justice after the Bureau had recommended the prosecution of

19 Mr. Marzec only and attempted to charge all of these commissions to Mr. Marzec.

He was a dupe. He relied on people, trusted people. Some of his acts are so inexcusable, and they are so inexcusable he was taken in by some of these people.

Had he gone to the Bureau and had competent counsel in the first instance of his choice he would never have been in this situation.

That is our position, and we will give it to you with the best we have as it is developed here.

I thank you.

20

United States of America
Northern District of Illinois
Eastern Division

IN THE UNITED STATES DISTRICT COURT

* * (Caption—No. 55 CR 679) * *

CERTIFICATE

I hereby certify that the above and foregoing transcript comprising pages numbered consecutively from 1 to 19 is a full, true and accurate transcript of the original shorthand notes of the Opening Statements by Albert F. Manion, Esq., and Joseph A. Struett, Esq., respectively, upon the trial of the above-entitled cause before the Honorable John P. Barnes, Chief Judge of said Court, and a jury, on February 5, 1957.

/s/ Roy E. Fuller
Roy E. Fuller
Official Court Reporter
United States District Court
Northern District of Illinois

August 15, 1957

157 THE UNITED STATES
vs.
JOSEPH T. MARZEC.

No. 55 CR 679.
Chicago, Illinois,
February 6, 1957,
10:00 o'clock a. m.

159 MAX E. MILLER, having been previously duly sworn, resumed the stand, was examined and testified further as follows, to-wit:

Direct Examination (Continued) by Mr. Manion.

Q. Mr. Miller, are you the same Mr. Miller who testified at the close of yesterday's session?

A. Yes, sir.

Q. Mr. Miller, I will show you a group of documents purportedly issued by Max E. Miller, marked Government's Exhibits 24-A through and including 24-R for identification, and ask you to examine those checks and see if you can identify them?

A. Yes, sir.

Q. Are those your checks?

A. Yes, they all bear my signature.

Q. Were all these checks issued by you?

A. Yes, that's right.

Q. In the regular course of your business?

A. That's right.

Q. Now, what disposition did you make of these checks, Mr. Miller, Government's Exhibits 24-A through 24-R for identification?

160 A. These checks I paid as commission to Mr. Marzec.

Q. You used these checks to pay brokerage commission to Mr. Marzec, is that correct?

A. Yes.

Q. That is during the calendar year 1949?

A. That is correct.

Q. Did you deliver each of these checks 24-A through 24-R to Mr. Marzec personally?

A. Yes, sir, Mr. Marzec came to my office on Saturday and I used to give him the checks.

By the Court: Speak up. I can't hear you.

By the Witness: I can't speak very loud, your Honor.

By the Court: Then do the best you can. Speak slowly.

By the Witness:

A. Mr. Marzec used to come every Saturday and I used to make out the checks and hand them to him personally.

By Mr. Manion:

Q. That was every Saturday?

A. Yes, sir.

161 Q. Were these checks issued on or about the date they bear?

A. Correct.

Q. Have they been retained by you as part of your books and records?

A. Yes.

Q. It was in the regular course of business to keep your records?

A. Yes, all checks.

By Mr. Manion: At this time the Government will offer in evidence Government's Exhibits 24-A through 24-R for identification.

By Mr. Struett: Let me ask you, are those all the checks?

By Mr. Manion: For the calendar year 1949.

By Mr. Struett: Just for 1949?

By Mr. Manion: Yes.

By Mr. Struett: Why don't you offer them for 1950 at the same time, and we can check them at one time.

By Mr. Manion:

Q. Mr. Miller, I will show you a group of checks
162 marked Government's Exhibits 25-A through 25-Z for identification, and ask you if you will examine those checks and see if you can identify them as part of your books and records.

Have you now examined the checks, Mr. Miller?

A. Yes, sir, those are all my signature. They are the checks I paid to him.

Q. These are the checks you paid to whom?

A. Mr. Joseph Marzec.

Q. During what year?

A. 1950.

Q. Were these checks also issued to Mr. Marzec, that is, Exhibits 25-A through 25-Z for identification?

A. That is correct.

Q. In payment of brokers' commissions?

A. That is correct.

Q. Were these checks paid to him in the same manner?

A. Yes, the same manner.

Q. The same manner as the checks you paid him in 1949?

163 Q. Mr. Miller, I notice some of Government's Exhibits 25-A through 25-Z were paid to Joseph Marzec, and some were paid to cash.

A. Some of them he requested be paid in cash.

Q. Did he state the reason why he wanted them in cash?

A. No, he didn't state any reason. In the event he wanted to cash them he could cash them at my bank.

Q. Cash them at your bank?

A. Yes.

Q. Mr. Miller, I will show you a document marked Government's Exhibit 26 for identification which purports

to be a check stub record of Max E. Miller & Son and check 1167—pardon me, 1168, and ask you if you have made a search for the check which corresponds to that entry?

A. Yes, sir, I made a search for that check. This check is a check which was paid to Joseph R. Miller. As I issued the check you will find the check stub for $1,000.00, and when he came over he didn't accept the check.

By the Court: I can't hear you.

By the Witness: These are checks. This is a check
164 I issued to my son and he cashed the check in the Belmont National Bank, a check for $1,000.00 which I brought over to Mr. Marzec.

By Mr. Manion:

Q. Did you deliver the proceeds of that check to Mr. Marzec?

A. Correct.

Q. For what purpose?

A. That was on a mortgage on Greenwood Avenue.

Q. Do you recall the address on Greenwood Avenue?

A. Yes, 43-something.

Q. 43?

A. 65, I believe.

Q. Could it have been 4361 Greenwood Avenue?

A. Yes, that's right, 61 to 65 Greenwood.

Q. Was the thousand dollars the only commission paid to Mr. Marzec in connection with that loan?

A. No, there was another check issued to him for—

By Mr. Struett: Just a second. You had better sit over here, Joe, so you can hear.

By the Witness:

165 A. There was another check issued to Mr. Marzec. I don't remember what it was, $170.00 or $175.00.

By Mr. Manion:

Q. Now, again referring to Government's Exhibit 26 for identification, Mr. Miller, I direct your attention to the stub entry for check No. 1185.

A. That is the check I issued, $170.50.

Q. To Mr. Marzec?

A. To Mr. Marzec, yes.

Q. Also as part of the commission on the property?

A. Yes, correct.

Q. The property at 4361 Greenwood, is that correct?

A. Correct.

166 Q. Now, Mr. Miller, in addition to the mortgages which you negotiated with the Polish Roman Catholic Union during 1950 on which you paid the commissions you have already told us about, did you have occasion to obtain a first real estate mortgage loan from the P.R.C.U. in July 1950, for a piece of property located at 4414 and 4416 Marden Avenue?

A. Yes, sir, I did.

Q. How was that deal closed, Mr. Miller, if you can recall?

A. This deal was closed with Mr. Sam Server.

Q. How was that transaction handled, Mr. Miller?

A. It was handled, I think, through the Chicago Title and Trust.

Q. Was there a commission paid to Mr. Marzec in connection with that piece of property?

A. Oh, yes.

Q. And that loan?

A. Oh, yes.

Q. How was that commission paid?

A. I don't remember. I couldn't recollect.

Q. Do you recall whether or not the commission was

paid from the escrow of Chicago Title and Trust
167 Company?

A. I don't recall. I have so many loans that it is a physical impossibility for me to remember.

Q. You do recall arranging the mortgage for this property at 4414 and 4416 Malden Avenue?

A. Correct. Yes, sir.

Q. Now, during the year 1950, Mr. Miller, did you have occasion to arrange a first mortgage real estate loan of the P.R.C.U. for the property located at 7200-7208 South Michigan Avenue in Chicago?

A. Yes, sir.

Q. Do you recall how that mortgage was handled, how that deal was handled?

A. Yes. I had to go to Mayo Brothers and I made arrangements with the Chicago Title and Trust to pay it directly to Mr. Marzec.

Q. To pay what directly to Mr. Marzec?

A. The commission. The amount was $2600.00.

Q. The amount was $2600.00?

A. Correct.

By Mr. Manion: At this time, your Honor, the Government will offer in evidence Government's Ex-
168 hibits 25-A through 25-Z for identification, Government's Exhibit 26 for identification, and Government's Exhibit 19-A and 18-A for identification.

By Mr. Struett: If your Honor please, I would like to have a chance to have my client go over these. There are thirty checks. We would have done it this morning, but we worked here until pretty near six o'clock, and I would like to have him go over and check these with his list. There is no question that it may take him twenty minutes. I am sorry, but I will do it as soon as I can.

By the Court: What do you say, Counsel?

By Mr. Manion: I don't think there is much I can say, your Honor.

By Mr. Struett: I mean, he wants to do it, and I think he is entitled to it, your Honor.

169 The Court: I am not denying you that right.

By Mr. Struett: So, if we can have that recess we can go right at it.

By the Court: Is there something else you can go ahead with?

By Mr. Manion: Just one or two questions of Mr. Miller.

170 By Mr. Manion:

Q. Mr. Miller, did you and Mr. Marzec have any business dealings other than these commission payments that you have told us about?

A. Oh, he and I acquired some property together.

Q. You and he acquired some properties together?

A. That is right.

Q. During what period of time was this, Mr. Miller?

A. I think it was in 1949, 1949 and 1950.

Q. And who held title to these properties?

A. Title was held—I think it was the Cosmopolitan National Bank, as trustee.

Q. With yourself and Mr. Marzec as beneficiaries?

A. Well, no. There was more than one of them. There was a group.

Q. There was a group?

A. Yes.

Q. Do you recall how many properties you and Mr. Marzec acquired together during 1949 and 1950?

A. I don't recall how many there was. Let's see. I think there was one on 6437 to 41 Kenwood Avenue. Another one was 614½ East 71st Street. Another one was

1444 East 65th Place or 66th. I am not positive about that.

171 Q. The title of all these properties was held in various trusts of the Cosmopolitan National Bank?

A. With the Cosmopolitan National Bank as trustee and a beneficiary certificate was issued to each beneficiary.

Q. Now, was a mortgage arranged for those properties as well, with the Polish Roman Catholic Union?

A. Well, the mortgage on some of these properties—on some of these properties the mortgage was arranged by other people and they didn't take that mortgage out, so I went over to the real estate man and I acquired that property because it was laying there for three or four months previously to the mortgage being arranged.

Q. Did you yourself make the original mortgage arrangements for these properties?

A. Yes, I made the arrangements for the mortgages on these properties, yes. I made the arrangements for the mortgage.

Q. In addition to the properties that you acquired with Mr. Marzec, you personally acquired quite a few properties, did you not, with the P. R. C. U. mort-

172 gage loans?

A. Not myself. It was acquired by a certain group of attorneys and I had one-quarter interest in them.

Q. How did the commission vary in these various properties? I believe you told us a little bit about that yesterday.

A. Well, the commissions in 1948, 1949 and 1950 were never less than four points.

Q. Through all of 1948, 1949 and 1950 it was never less than four points?

A. Four points. There was an exceptional loan that

I remember; it was on Kedzie and Eastwood Avenue, which I made for Kahn and—what is the name? It was Kahn and Levinkind, which was a three point.

Q. Did the commission vary as to whether or not Mr. Marzec was participating in the equity of the property purchased?

A. No, it wasn't varying.

Q. It did not?

A. No.

Q. Did it vary as to whether or not you were buying for your own interest?

173 A. It didn't make a particle of difference. The commission was the same. There was one arrangement made on commissions.

Q. Those commissions were paid to Mr. Marzec, is that correct?

A. That is correct.

Q. Did you pay commissions during 1949 and 1950 to anyone other than Mr. Marzec?

A. Oh, I did. I made other loans not to the Polish Roman Catholic Union.

Q. I mean, other than the Polish Roman Catholic Union.

A. No. You must be specific about it. No, I did not pay anybody else anything.

By Mr. Manion: I have no further questions.

By Mr. Struett: May we have a recess, your Honor, for fifteen minutes? We will try to straighten this out.

By the Court: How long will it take you?

By Mr. Struett: There are about thirty checks that he wants to check with his list.

174 By the Court: Well, tell me how long.

By Mr. Struett: I will say twenty minutes and we will have them ready.

By the Court: See if you can't make it fifteen minutes. We want to get along as fast as we can.

Take a short recess, ladies and gentlemen.

(Thereupon a short recess was taken.)

(Thereupon said documents were marked Government's Exhibits 27-A through 27-Z, 27-AA through 27-ZZ and 27-AAA through 27-OOO for identification.)

175 By Mr. Struett: We are finished with those checks. We will have no objection to their introduction. We may want to use them later on.

(Said documents, so offered and received in evidence were marked, respectively, Government's Exhibits 24A through 24-R, both inclusive; 25-A through 25-Z, both inclusive; 26; 27-A through 27-Z, both inclusive; 27-AA through 27-ZZ, both inclusive, and 27-AAA through 27-OOO, both inclusive.)

Cross Examination by Mr. Struett.

Q. I will show you now Government's Exhibit 26 marked for identification.

Mr. Miller, you have an entry here on May 29, 1950, for $1,000.00.

A. Yes, sir.

Q. Now, what is that?

A. That $1,000.00, I brought a check—you will find another check, that was where I brought a check to

176 the Polish Roman Catholic Union and that was on the acquirement of the mortgage from the Continental Bank on Greenwood Avenue and Mr. Marzec came out and said the boss will not take it.

Q. All right, you go ahead and finish.

A. He said the boss wouldn't take it, "You will have to go to work and get some cash." I sent my boy out to

the Belmont National Bank and he cashed his own check because he didn't have my check with him, and he brought me the $1,000.00 in $100.00 bills in a Belmont National Bank envelope, which I gave to Mr. Brandt.

177 Q. You saw Mr. Marzec go in and hand it to Mr. Brandt?

A. That's right. Well, no, I didn't see him, but he went in the other office.

Q. You say you had got another check that you originally drew when you came out to the Polish Roman Catholic Union, is that right?

A. I have a check here which I cancelled.

Q. All right. Show us where that is.

A. I will find it here, because I cancelled that check. No, it is not in here. He made out his personal check. I don't think I have got that check here. I destroyed it when he wouldn't accept it. No, I haven't got it here; no, only the check that my son cashed.

Q. I see. Now, if you had a personal check it was destroyed?

A. I destroyed it, yes.

Q. That is all right. You have told us that now. Did you tell that to the Government before this day?

A. That is right.

Q. About taking the original check out and bringing it back?

178 A. Correct.

Q. Did you tell it to the investigating agents, too?

A. Pardon me?

Q. When the agents were investigating this case did you tell them that?

A. Yes, I did tell them.

Q. Now, I will show you Plaintiff's Exhibit 24-A, a check payable to Mr. Marzec for $1250.00?

A. Yes, sir.

Q. Now, what is that on? Do you remember the building?

A. That is the commission on 3251 Grenshaw—no. 3451 Grenshaw.

Q. Now, that was property you held in trust, wasn't it?

A. I didn't hold it in trust. It was held to Joe Marzec, one-third.

By Mr. Struett: Just a minute. I want to have a document marked.

Will the reporter mark this my next number?

(Thereupon said document was marked Defendant's Exhibit 7 for identification.)

179 By Mr. Struett:

Q. Well, now I will show you Defendant's Exhibit 7 for identification which purports to be a trust agreement covering the property at 4451-53 West Grenshaw Avenue.

A. That's right, correct.

Q. And it is dated, is it not—well, this is only a copy, but it was dated the 2nd day of November 1948?

A. Yes, sir.

Q. And that check, what was that now, this check 2480? Was that commission paid on that property?

A. Yes, that's right.

Q. Now, you had title there in this land trust?

A. Yes.

Q. In the name of Joseph Marzec, Dorothy Stevens and Max E. Miller?

A. That's right.

Q. Who is Dorothy E. Stevens?

A. I don't know, Mr. Struett. I was told she was daughter to Mr. Brandt.

By Mr. Struett: Is there any question about that?

By Mr. Manion: I understand that Dorothy Ste-
180 vens is Mr. Brandt's daughter.

By Mr. Struett: I have that check.

By Mr. Manion: I understand that.

By Mr. Struett:

Q. And you made distribution to her on that, did you not?

A. That's right.

Q. You paid her a part of the distribution, $1543.36?

A. Correct.

By Mr. Struett: Mark this the next exhibit number.

By Mr. Manion: May I see what you are reading from, Mr. Struett?

By Mr. Struett: That is one of the checks where he made partial distribution, as I understand it. That is on this building.

By Mr. Manion: All right.

By Mr. Struett: Mark this Defendant's Exhibit 8, I believe.

(Thereupon said document was marked Defendant's Exhibit 8 for identification.)

181 By Mr. Struett:

Q. Now, as I understand it, you said you had no dealings, forgetting these commissions now for the moment—

A. Yes.

Q. —that you had no business dealings on buildings with anybody but Mr. Marzec?

A. Correct.

By Mr. Manion: I object to that. I don't think that is what he testified.

By the Court: He said he had no other loans, as I understood it.

By Mr. Struett: No.

By Mr. Manion: That was my question, had he paid commissions to anyone, and then later I asked him if he had business dealings.

By Mr. Struett: I understood you to ask if he had business dealings with anybody but Marzec.

By Mr. Manion: No, I did not.

By Mr. Struett: I will change my question.

By Mr. Struett:

Q. You said you had business dealings with Mr.
182 Marzec aside from these commissions. You and he were in buildings?

A. That is correct.

Q. Now, did you have any business dealings with anybody else?

A. Yes, I had with Stanley Kusper, which had one address at 1500—1552 East 65th Street.

Q. Now, how did Kusper get that one-fourth interest, if you recollect now?

A. I recollect the deal was to be on a 50-50 basis, Joe Marzec and myself, but when we O. K'd the loan I couldn't get the deal until Mr. Kusper received one-quarter interest. He put his money in just the same as Mr. Marzec and myself, but he refused to issue the commission. He said Mr. Marzec—he would get one-quarter.

Q. I see. That was about when, in '48?

A. '48.

Q. Now, Mr. Miller, isn't it a fact that—oh, I want to ask you this question: You said your dealings were primarily with Mr. Marzec.

A. With reference to loans, yes.

Q. What do you mean by that?

A. I never discussed any loans except with Mr.
183 Marzec.

Q. You never discussed any loans at any time with anybody else?

A. Except Mr. Marzec.

Q. Except Mr. Marzec?

A. That's right.

Q. Now, isn't it a fact that you were over at the United States Attorney's office with Mr. Rieger and myself and Mr. Tobin?

A. Yes.

Q. And that you told him, you told these agents at the beginning of this investigation that Mr. Marzec was only a collector here?

A. That's right.

By Mr. Manion: I object. That does not specify which one he is alleged to have said what to.

By Mr. Struett: He said it to Tobin in my presence.

By Mr. Manion: Are you now relating to a conversation or asking him in regard to conversation he had with Mr. Tobin of our office?

By Mr. Struett: Yes.

184 By Mr. Manion: All right.

By Mr. Struett:

Q. That is true, isn't it?

A. That is correct.

Q. Now, in addition thereto, and—well, you made that clear when the agents came in there the first time?

A. Yes, correct, to Mr. Osheroff.

Q. And you dealt with this Union way back in 1941, didn't you?

A. That's right.

Q. And most generally these loans had to have the approval of the treasurer, they had to be backed up by an independent appraiser, and you had to get the legal mechanics through, isn't that right?

A. That's right.

Q. Basically, to make a loan?

A. That's right.

Q. Out there?

A. That's right.

Q. Now, you had to get the approval of the treasurer, you had to get the independent appraiser; in other words, you had to have a valuation sufficient to justify the loan and the appraiser could set the figure one
185 way or the other as he thought best according to his judgment, and then in addition to that you had to get the legal details through, and if you didn't get the legal details through you run up against the very situation you ran up against when you had to give Kusper part of that building, is that right?

A. Yes, sir.

Q. And you have known that since 1941, is that right?

A. That's right.

Q. You told that to the agents in the early part of the investigation, did you?

A. I do not remember.

Q. What?

A. I don't remember whether I told that to the agents or not.

Q. You don't remember that?

A. No.

186 By Mr. Struett: Now, mark this Defendant's Exhibit 9 for identification, please.

(Thereupon said document was marked Defendant's Exhibit 9 for identification.)

By Mr. Struett:

Q. Now, I show you Defendant's Exhibit 9, Mr. Miller.

A. Yes.

Q. Will you state what it is?

A. It states right here what it is, Grenshaw, 34 Grenshaw. This is the building where—what is her name—Mr. Brandt's daughter had it, 34—

Q. Yes, that is right. Well, that is a list of the commissions?

A. Paid out to Mr. Marzec.

Q. And that is a similar list, is it, to that which you gave the agents when they first came to you?

A. Yes, sir.

Q. All right. During the early stages of the investigation, the agents came to you and you gave them a list of the commissions?

187 A. A list of the commissions and the checks.

Q. You are reasonably certain that this is the list that you gave them?

A. Absolutely.

Q. Now, about two weeks later did you have any conversation with Special Agent Wolf of the Intelligence Unit about that list?

A. He came in and he brought me an affidavit on that.

Q. No, no. Did you have any — to refresh your recollection, because it is a long time ago, —

A. Yes.

Q. — did you have any conversation with him about the list that you gave him or Osheroff, being out in open circulation.

A. Yes, sir.

By Mr. Manion: I object to this, your Honor. I don't see how it is pertinent to the issues in this case. It is far beyond the scope of the direct examination. I hesitated to object to this entire line of cross examination, but I believe it is a little far afield and going into areas 188 that are not pertinent to the case.

By the Court: I don't see the materiality of this question.

By Mr. Struett: It will tie up, the relationship here of this man, very closely, your Honor, when I am through

and I assure you that or I wouldn't be asking these questions. I am saying it in all sincerity.

By the Court: I don't see the materiality here in your question.

By Mr. Struett: It is leading up to an overall picture here just as I represented to this jury yesterday. I am going to bring that out and develop this relationship of this man to this situation, what the true situation was. Everything here is important. It will all jell in just like in a crossword puzzle. I can assure you of that, your Honor. I am not asking this just to be asking questions. I promise you that, and I make it in all sincerity.

By the Court: Proceed as judiciously as possible.

189 By Mr. Struett:

Q. What was that conversation, to the best of your recollection?

A. I talked to Mr. Wolfe about the list that I submitted to him which was being peddled around in the saloons over on LaSalle Street with a fellow by the name of Nicholas.

190 Q. And what did he tell you, then?

A. He couldn't understand it, what had happened there, but I threatened to go to the intelligence department because this was a document which was entrusted to the intelligence department confidentially and I didn't want my list to be peddled around in saloons in the Bismarck Hotel.

Q. Did he afterwards call you and say that the document had been put back?

A. Yes.

Q. All right. Now, Mr. Miller, I invite your attention to a date of sometime approximately in September of 1954.

A. Yes, sir.

Q. And invite your attention to certain checks to Mr. Kusper which were made out in the name of Mr. Repsuk which is Kusper bank and I invite your attention to the fact that those checks had been delivered to the Internal Revenue Service and that Mr. Rieger and I were unable to get them, they couldn't find them. Now, did you have any conversation with Mr. Wolfe on or about that date relative to the return of those checks?

A. I don't recollect. Those checks I don't recol-
191 lect, because these were not my checks.

Q. No, they were not. You remember, you called Mr. Marzec and you said you talked to Mr. Wolfe and that he had delivered the checks over to Mr. Rieger's office. Now, does that refresh your recollection?

A. Yes.

Q. That is true, isn't it?

A. Yes, sir.

By Mr. Struett: Will you please mark this Defendant's Exhibit 10 for identification?

(Thereupon said document was marked Defendant's Exhibit 10 for identification.)

By Mr. Struett:

Q. Now, I show you Defendant's Exhibit No. 10, which is a vital return, the client's copy of the property at 3449-55 West Gresham building. That is the building — which building is that?

A. Grenshaw.

Q. Grenshaw?

A. Yes, sir.

Q. What building is it?

192 A. That is the building that Mr. Brandt's daughter had one-third interest in.

Q. O. K., fine. Now, do you recall who prepared that income tax return?

A. The income tax? I always filed the partnership returns.

Q. Yes, but I mean, who prepared it for you?

A. Who prepared it for me?

Q. Yes.

A. Let's see, what year was that?

Q. 1951, now. That would be probably early in 1952.

A. I think this was prepared by Arthur Goldberg. It was prepared by Arthur Goldberg.

Q. To refresh your recollection, wasn't it prepared by Osheroff?

A. Yes, but he was an employee. I done business. He was my accountant that did the work in my office but I dealt with Goldberg, that Arthur Goldberg.

Q. But Osheroff did the work on it, is that right?

A. That is right.

Q. And Osheroff, in turn, was a revenue agent that worked on this case, is that right, Mr. Miller?

193 A. He was working for Goldberg.

Q. Yes, he worked on this case and he was working for you?

A. He didn't work for me. Goldberg did.

Q. Goldberg had been your accountant for years, hadn't he?

A. Yes.

Q. Now, Mr. Miller, you were instrumental or interested in a building at 2729-37 West Leland Avenue, isn't that true?

A. Yes, sir.

Q. Now, what kind of a building is that?

A. That is a 13-flat. Let's see. I think it is twelve flats. It has no basement.

Q. There was a party by the name of Tyrrell Richardson who was an attorney who wanted to make a loan on that building, is that correct?

A. No, sir.

By Mr. Manion: Your Honor, I must again object to this line of questioning.

By the Witness:

A. No, sir.

By the Court: I don't see the relevancy here of these questions you are asking and the answers you are
194 getting.

By Mr. Struett: Judge, I will give it this way: Tyrrell Richardson was a lawyer that they got for Marzec, as I said yesterday, and I will cover it now. Then, the next thing you know, Richardson is negotiating a loan and Osheroff is making the payments on the building. If that isn't relevant in my theory of the case, I don't see what it is.

By the Court: I don't see the relevancy.

By Mr. Struett: I am trying to make it as short as possible.

By the Court: Going back to your question, you asked who this man was who prepared this income tax; he was an agent.

By Mr. Struett: And then he went to work for Mr. Miller.

By the Witness: He didn't go to work for me.

By the Court: No. He went to work for an auditor. I don't see the relevancy. I wish you would stay on
195 the lawsuit you are trying. It is important.

By Mr. Struett: I am staying on the lawsuit.

196 By Mr. Struett:

Q. Now, what do you know about that building? Make it fast.

A. That building I have acquired with George Stucker's real estate office at 5018 North Sheridan Road and I made the mortgage myself with the P.R.C.U. I held the building for about two or three years when Osheroff worked for Goldberg. He says he had a little money he would like to buy a piece of property with and I sold the property to Osheroff.

Q. And then Mr. Osheroff made the payments?

A. Mr. Osheroff made the payments. He took over the beneficiary certificate on the trust.

Q. Now, Mr. Miller, I show you Government's Exhibit No. 19-C and Government's Exhibit 19-A which is a trust deed covering the property — it is an escrow agreement with the Title and Trust Company covering the property at — where is the property? It doesn't show here.

By Mr. Manion: 7202-7208 South Michigan.

By the Witness: 7202.

By Mr. Struett:

197 Q. And there was a deposit there, according to the agreement, of $2600.00?

A. Correct.

Q. To Joe Marzec?

A. That is right.

Q. Now, did you know of that escrow when it was being set up?

A. I set it up myself.

Q. All right. Did you know that the provision was in there?

A. What provision?

Q. About the payment of $2600.00.

A. Yes, sir.

Q. Did you discuss it with Mr. Marzec?

A. Yes, sir.

Q. Before it went in?

A. No, sir.

Q. You and Mr. Kusper arranged that?

A. No, sir, I did not. That was my agreement with Mr. Marzec to pay him four points. That was a four point agreement for the rest of the loan, but I left for Mayo Brothers, I had a date at Mayo Brothers for examination and he wanted a check, so I made it payable directly to him.

198 Q. Yes, but that was in September, 1950, you made the check payable to him?

A. I don't remember when it was. The check is there.

By Mr. Manion: It is a Chicago Title and Trust Company check.

By the Witness: The Chicago Title and Trust paid it out. I didn't pay it out. I opened the escrow myself.

By Mr. Struett:

Q. Is it your statement here now that before you opened this escrow you talked to Mr. Marzec and he said it was all right to provide in the escrow for the payment of the $2600.00 check?

A. I told him I would make that provision, yes.

Q. In the escrow?

A. Yes, sir.

By Mr. Struett: Mark this Defendant's Exhibit No. 11 for identification.

(Thereupon said document was marked Defendant's Exhibit 11 for identification.)

By Mr. Struett:

199 Q. Now, Mr. Miller, you suggested to Mr. Marzec back in 1951, I believe it was, that he employ an attorney, did you not?

A. Pardon me?

Q. You suggested to Mr. Marzec that he employ an attorney?

A. Yes, sir.

Q. And you recommended an attorney?

A. Yes, sir.

Q. And who was it?

A. It was a fellow by the name of Tyrrell Richardson.

Q. How long had you known Mr. Tyrrell Richardson?

A. Well —

By Mr. Manion: Your Honor, I will object to it not only because he is again going far afield in this case, but it does not come within the scope of the direct examination.

By the Court: Sustained.

By Mr. Manion: Not pertinent to the issues.

By the Court: Sustained.

By Mr. Struett:

200 Q. Now, I show you Defendant's Exhibit No. 11 marked for identification, and ask you what that is?

A. Well, this is an affidavit that I made to Mr. Wolfe, that brought it in. I think that is the affidavit. I think I have got a copy here.

Q. You gave that to Mr. Wolfe, did you?

A. Yes, sir, of the Intelligence Department.

Q. I read you the second paragraph thereof.

By Mr. Manion: Your Honor, I would object to this procedure, if he is intending to impeach the witness on the basis of the affidavit.

By Mr. Struett: I just want to find out the witness did here.

By Mr. Manion: If he wants to offer this in evidence, I believe he should reserve it for his case.

By the Court: Yes, if you want to offer it in evidence. If you want to impeach him, it is another thing.

By Mr. Struett: He said he dealt exclusively with Mr. Marzec and he said —

By the Court: He said he made his loan through
201 Marzec.

By Mr. Struett: Well, all right.

202 Q. Now, I invite your attention to the third paragraph thereof.

By Mr. Manion: Again I am objecting to this procedure, your Honor.

By the Court: Sustained. Is that within the direct?

By Mr. Struett: What?

By the Court: I am telling you to stay within the direct examination.

By Mr. Struett: If your Honor please, I am staying within the direct examination.

By the Court: Let me see what you are talking about.

(Document handed to the Court.)

By the Court: Objection sustained. Now, proceed to something else. Proceed to something else, please.

By Mr. Struett: I will, as soon as I can, your Honor. I will do it as best I can.

By Mr. Struett:

Q. Now, Mr. Miller, isn't it a fact that you dealt with, in your business dealings, in effect, in this whole entire situation, with Brandt, Kusper, with Marzec as the
203 collector involved here; now, isn't that substantially correct?

A. It is not the truth.

Q. What?

A. It is not the truth. I have never spoken to Brandt during all his administration. I never took up any loans. The only one I ever discussed loans with was Mr. Marzec I never dealt with Brandt. I never dealt with Mr. Bruno and I never dealt with Mr. Kusper. There is only one man I dealt with and that is Mr. Marzec.

Q. Now, how long have you known Special Agent Wolfe?

A. I have known him from the time he came in to make the investigation and I requested him to bring a subpoena duces tecum because I didn't want to get the books and give him the books without a subpoena.

Q. Is that the first time you ever met him?

A. The first time I ever met him in my life.

Q. How long have you known Revenue Agent Osheroff?

A. That is the first time I met him, when he came in with Mr. Wolfe. I never seen him or never heard of him in my life.

204. Q. You will be available for further examination here?

A. I am going to the hospital, to the Weiss Memorial Hospital, so, if you want anything, you have to come to the hospital because I have to go to the hospital.

Q. How long will you be there?

A. I don't know. I am just over double pneumonia and I was three weeks in the hospital.

By Mr. Struett: I would like about a ten minute recess to talk to my client to see if there are any other questions.

By the Witness: I came down sick.

By the Court: You have had about thirty minutes already.

By Mr. Struett: I understand that.

By the Court: Take him into the jury room if you want to talk to him and come back.

(Short intermission.)

205 Q. Mr. Miller, do you know Blanche Wiersbicki?

A. What is the name?

Q. Blanche.

A. I don't know the name.

Q. Wiersbicki?

A. Wiersbicki?

Q. Yes. Did you ever draw any commission checks to her?

A. To Blanche — ?

By Mr. Manion: During what period of time?

By Mr. Struett: 1943. You have got the checks here.

By Mr. Manion: I do not have such checks here.

By. Mr. Struett: I beg your pardon.

By the Court: Strike it out.

By Mr. Struett: What?

By the Court: Strike out your remarks.

By Mr. Struett:

Q. Now, I will spell that name for you; Blanche W-i-e-r-s-b-i-c-k-i.

A. I have never made out any checks to Blanche Wiersbicki in 1947.

206 Q. In 1947?

A. No, no women ever got check from me.

Q. Do you know who she is?

A. No.

Q. If I told you that is Mr. Kusper's wife's maiden name, would that mean anything?

A. Oh, it is not Veisbitsky.

Q. Oh, Veisbitsky?

A. Yes. I never made a check in my life to her except I gave her a fifty dollar check for the poor.

Q. Do you know Frank Boksa?

A. Boksa.

Q. Yes.

A. Yes, sir.

By Mr. Manion: During what time?

By Mr. Struett: 1947 and prior thereto.

By Mr. Manion: I object.

By the Court: Sustained. I don't see the relevancy.

By Mr. Struett: Your Honor, he is paying commissions here to other people.

By the Court: What of it? He has been in business, I assume, for a long time.

By Mr. Struett: That is all.

207 *Redirect Examination by Mr. Manion.*

Q. Mr. Miller, you say that you had business dealings with Mr. Marzec exclusively. What business dealings are you referring to?

A. Only that we acquired some property.

Q. Are you referring to commission transactions?

A. Commission transactions, yes, sir.

Q. During what period of time?

A. I think in 1947 that was, sometime in the middle of '47.

Q. Until what final time?

A. Until September, 1954.

Q. That is in connection with commissions paid for the P.R.C.U. loans?

A. Yes.

Q. Did you ever have any transactions with Mr. Brandt or Mr. Kusper in the regular course of these loans?

A. I have spoken to them but never discussed any business with them.

Q. You mean not any business at all?

A. No, not in all the years I have made loans have I ever discussed anything with the officers in relation
208 to them.

Q. Do you mean commissions?

A. Even applications. I have sent them in by United States Mail, and a copy was sent to Mr. Marzec. Every copy of it was sent through the U. S. mail.

Q. With a copy to Mr. Marzec?

A. Yes. This is an application (handing a document to Mr. Manion).

Every application for a loan was signed by the man that wanted the mortgage, and that is through the Polish Roman Catholic Union.

By Mr. Manion: Will the reporter mark this paper Government's Exhibit No. 29.

(Thereupon said document was marked Government's Exhibit 29 for identification.)

By Mr. Manion:

Q. Is Government's Exhibit 29 for identification a type of application you submitted, sir?

A. Yes, sir.

Q. Is that correct?

A. Yes, correct.

209 Q. Mr. Miller, you said you sold a building to Osheroff, is that correct?

A. Correct.

Q. When did that sale take place?

A. I don't remember. I think it was in 1953.

Q. Did you sell that building to him during the time he was with the United States Revenue Service?

A. No, he had been out already two or three years. He came into my office, either him or another man, and told me he has got some money and would like to make an investment, and he bought it from me the same as any other purchaser.

Q. This is after?

A. Yes. The only thing, I gave him the commission because there was no one involved.

Q. At the time you prepared this Government's Exhibit 29 for identification yourself and two others, at that time was he employed by Arthur Goldberg?

A. Yes, at that time he was employed by Arthur Goldberg, who was an accountant, a very responsible firm.

Q. Did Mr. Osheroff ever do any work for you?

A. I have never seen Mr. Osheroff, never seen the 210 man until he came in there to examine the books.

Q. During the time he was working on this case did he do any accounting work for you?

A. No, sir.

Q. The work he did for you came after he left the Internal Revenue Service?

A. That came later, yes.

By Mr. Struett: I have nothing.

By Mr. Manion: I have no further questions.

By Mr. Struett: You have got your checks.

By Mr. Manion: Mr. Struett said he had no objection to the checks. We are also offering that portion of Government's Exhibit 28 for identification; we are also offering entries 1168 and 1185 in Government's Exhibit 26 for identification.

By Mr. Struett: Why can't we put it down, prepare it on a slip of paper and read it into the record later? Why put in the whole book. The only objection I have is about that. I will stipulate. Put that on a sheet of paper and read it into the record.

211 By Mr. Manion: May I read those two entries into the record, your Honor?

By the Court: Yes.

By Mr. Manion: Ladies and gentlemen, Government's Exhibit 26 for identification in evidence is a check stub record of Mr. Max Miller, entry 1168 which relates to May 29, 1950 and relates to a check drawn to the order of Joseph R. Miller, exchange for our checks re mortgage P. R. C. U., amount this check $1,000.00.

Entry 1185 is dated June 11, 1950, to the order of cash, re 4361 Grenshaw to Marzec, $170.50.

Thank you, sir.

(Witness excused.)

* * *

219 HENRY S. BANACH, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Manion.

Q. Will you state your full name for the record, sir?

A. I don't hear you, Attorney.

Q. I say will you please state your full name, for the record?

A. Henry S. Banach.

Q. What is your address?

A. 5606 North Western Avenue.

Q. What is your business or profession?

A. I am a mortgage banker.

Q. How long have you been engaged in that profession, Mr. Banach?

A. The last twelve years.

Q. You are appearing here in response to a subpoena, is that correct, sir?

A. That's right.

Q. That subpoena called for certain records, is that correct?

220 A. Yes, sir.

Q. You have brought these records with you and delivered them to the agents, is that correct?

A. Yes, sir.

Q. Mr. Banach, in the course of your business as a mortgage banker have you had occasion to do business with the Polish Roman Catholic Union or any of its representatives?

A. I did do quite a bit of business, practically all my business during the years 1949 and 1950.

Q. When did you begin doing business with them, sir?

A. I began the latter part of 1948.

Q. Was that when you first submitted the application to the P. R. C. U. for a mortgage loan?

A. Yes, sir.

Q. In 1948?

A. Yes. Of course I have done business with P. R. C. U. years ago. I am a member for thirty years, but not on that administration; 1948.

Q. By that administration you are referring to what?

A. I am referring back now to 1935, 1932 to 1935.

Q. Did you do business with them during the 30's?

221 A. I did.

Q. Did that continue through the early 40's, from 1935 to 1946?

A. No, I didn't do any business after 1945.

Q. After 1945?

A. Until 1948.

Q. Did you apply there for loans on behalf of clients between 1945 and 1948?

A. Yes, I did.

Q. Were those applications approved or rejected?

A. My applications have been approved.

Q. They had been approved?

A. Yes, with the exception of maybe a few.

Q. This is during what period of time?

A. The year 1948.

Q. When did you first make application during 1948?

A. I think it was in August, 1948.

222 Q. To whom did you submit your application at that time?

A. I wrote a requisition to the treasurer, Brandt, treasurer.

Q. Did you have any dealings with Mr. Joseph Marzec in connection with that application?

A. Yes, all my dealings were done through Mr. Marzec.

Q. By all your dealings being done through Mr. Marzec you are referring to what type of dealings, Mr. Banach?

A. What type? Well, he left me know if an application was approved and he told me what the cost was going to be.

Q. By cost you are referring to what?

A. Commission.

Q. Commission. Was that commission paid to the Polish Roman Catholic Union?

A. No, the commission was paid to Mr. Marzec.

Q. Are you referring to Mr. Marzec?

A. Yes.

Q. I believe "Marzec" means "Marsh" in Polish, is that correct, Mr. Banach?

A. That is right.

223 Q. Did you at any time during the years 1948, '49 or '50 have occasion to pay commissions to anyone at Polish Roman Catholic Union other than to Mr. Joseph Marzec?

A. Only to Mr. Joseph Marzec, no one else.

Q. No one else?

A. No, sir.

Q. Did you have dealings with Mr. Brandt during that time?

A. I never had any of my—well, the requisition was to Mr. Brandt, but the dealings and processing and opinions on those loans I obtained from Mr. Marzec, Marsh.

Q. Did you have any dealings with Mr. Sobieraj?

A. I never had.

Q. How about Mr. Stanley Kusper, did you have dealings with Mr. Kusper?

A. No.

Q. I am referring now to commissions, you understand?

A. That's right. I never had any dealings.

Q. How did you pay Mr. Marzec, Mr. Banach, during the year 1949 with regard to these commissions? Did you pay him by check or by cash?

224 A. In the beginning I paid by check to his order. Later a request from him came to make my checks payable to cash, and later he requested the money be paid to him in cash.

Q. Paid to him in cash?

A. Yes.

Q. Now, did you pay money in cash as well as by check?

A. I did in the latter part of my dealings. That was the only way I could do business with him.

Q. How did you obtain the cash?

A. I used a check for the amount he requested, took it to my bank and cashed it, and put the money in an envelope and handed it to Mr. Marsh.

Q. Did you make any entries about those checks?

A. After the check came through. I made entries of course on the stubs and memorandum was made to whom the money went and for what purpose, and so on.

Q. Were those entries made by you personally or people working under your supervision?

A. By the auditor, who happens to be my wife.

Q. Your auditor is your wife?

A. Yes.

Q. What is her name?

225 A. Mary H. Banach.

Q. Mr. Banach, I will show you a group of checks

marked consecutively Government's Exhibits 27-A for identification through and including 27-OOO for identification, and I will ask you to look through those checks and see if you can identify them as part of the books and records of Henry Banach Company or Mary Banach, Real Estate?

A. They are made out in Mrs. Banach's handwriting, all of them.

226 Q. Are the entries thereon made under your supervision and direction or by you personally, the entries on these checks?

A. Yes. I advised her to make the check, for instance like this here one at 4221 for $720.00. She made it out for $720.00 cash, and it is Mr. Marzec's endorsement that is on this check.

Q. You recognize that as Mr. Marzec's handwriting?

A. Yes, I do. I saw it so many times.

Q. I direct your attention now to the signature on the check.

A. That is my wife's.

Q. Your wife's signature?

A. Yes.

Q. Were those checks made on or about the date they bear?

A. On the date they bear they were cashed and money delivered to Mr. Marzec.

Q. I invite your attention to the entries appearing on the reverse of the check other than the script endorsement of Joseph T. Marzec, and ask you if those entries were made on or about the date those checks were

227 drawn, or subsequent thereto. Will you explain when those entries were made?

A. When the payments were made?

Q. No, when the notations on the reverse of the check

were made. There is descriptive language appearing on the reverse of almost everyone of these checks?

A. Yes, there is.

Q. When were those entries made?

A. Those entries were made when the checks cleared through the bank.

Q. In other words, they would be made after the checks would be received by you from the bank after clearing, is that right?

A. Yes, at the request of my auditor.

Q. What is your auditor's name?

A. Samuelson.

Q. Did he direct you to do that?

A. Yes, he obtained on O. K. from the commissioner that I should keep the entries to the best of my ability for all money paid out in cash.

Q. Were all these checks marked Government's Exhibit 27-A through 27-OOO for identification kept by you in the regular course of business?

A. Yes, sir.

228 Q. And is it in the regular course of your business to keep this type of record?

A. Yes, sir.

By Mr. Struett: Your Honor, we will check them over and if they are agreed on we will agree to it. I have not had an opportunity to go over them.

Have you kept a work sheet on it?

By Mr. Manion: We have a couple of more questions.

By Mr. Struett: Ask your questions first.

By Mr. Manion:

Q. Mr. Banach, I will show you a booklet marked Government's Exhibit 28 for identification, which purports to be a group of check stubs from the regular three-check per page commercial check book, and ask you if you can identify those documents as part of your books and records?

A. Yes, sir, they are part of our books and records.

Q. Were the entries made thereon, referring now to Government's Exhibit 28 for identification, made on or about the dates which they bear?

229 A. Yes.

Q. Were those entries made in the regular course of business?

A. That's right.

Q. Are these records kept by you in the regular course of your business, sir?

A. Yes, sir.

Q. And it is in the regular course of your business that those are kept?

A. Yes, for income tax purposes.

Q. Do you know by whom these entries are made?

A. My wife.

Q. She is employed as your auditor?

A. Yes.

Q. I direct your attention to stubs 6524 and 6525 appearing in Government's Exhibit 28 for identification and ask you if you have made a search for the checks represented by those two stubs?

A. Well, I think it is the truth. It is just the way it says here.

Q. What I asked you is, were you able to find the checks relating to those stubs? Did you make a check or search for those checks in response to a sub-

230 poena?

A. We have had checks handled so many times by the Revenue men, and so forth, that we lost two of them, or misplaced them, but they have been made for the amounts as stated on the stub.

231 Q. These entries were made contemporaneously with the checks to which they relate, is that right?

A. That is right.

Q. Mr. Banach, referring back now for a moment to Government's Exhibit 27-GG for identification I invite your attention to a sheet of stationery or a copy of a letter which appears to be attached thereto, and ask you if you can identify that attachment appearing with that check?

A. Yes.

Q. Is that a part of the books and records?

A. Yes.

Q. Your books and records?

A. Yes.

Q. Of Banach?

A. Yes.

Q. Exactly what is that document, Mr. Banach, not as to its contents, but what is it?

A. This money has been deposited to Joseph Marzec's account by me at his request.

Q. Is that your file copy of a letter in regard to that check?

232 A. Yes. After I deposited the money to his account I sent a duplicate to his in-law, one Miss Marie Dempski, but I kept a triplicate.

Q. Does this letter relate to Exhibit 27-GG to which it is attached?

A. Yes.

Q. Did you attach those two together?

A. Yes.

Q. Did you do that in the regular course of business?

A. In the regular course of business.

Q. I show you now Government's Exhibit 20-A for identification, and ask you if you can identify that?

A. Yes, that is a triplicate of the deposit check.

Q. Did you deposit this check, Government's Exhibit 27-GG in the bank account of Mr. Marzec at the Pioneer Trust and Savings Bank, speaking of Exhibit 27-GG and

Government's Exhibit 20-A? Did you make such a deposit, sir?

A. I cashed this check, 1950, and I deposited it to his account in the Pioneer Trust and Savings Bank.

233 Q. Did you receive this triplicate copy?

A. Yes, I did; I requested this copy for my records.

Q. Mr. Banach, I refer you to Government's Exhibit 27-AAA for identification and ask you to refer to the legend appearing on the reverse thereof, and then I will ask you whether all or any part of the proceeds of that check were refunded to you by Mr. Marzec?

A. This money was paid to Mr. Marzec, $1,000.00, loan on 1522 South Springfield; 3850-54 West 13th Street, four per cent commission on $22,500.00 mortgage made by P.R.C.U. on above building paid to Joseph T. Marzec, originally to Marzec four per cent commission per this check on $25,000.00.

However could not make $25,000.00 mortgage. They only accepted twenty-two five. Joseph T. Marzec returned by cash $100.00 to us.

That is correct.

Q. Now, was any part of the proceeds of these other checks which you have identified this morning refunded to you by Mr. Marzec?

A. No.

234 Q. Other than the $100.00 you have just told us about?

A. No, only the $100.00.

Q. Mr. Banach, did you pay Mr. Marzec before or after the mortgage proceeds had been paid out of the P.R.C.U.?

A. Usually before, practically before. As soon as the application has been approved and before the mortgage papers were drawn I paid the money.

Q. Now, was every application that you file with P.R.C.U. during 1949 and 1950 approved? Did you receive every mortgage you applied for?

A. Some have been rejected. That is my recollection. But not many of them were.

Q. Did Mr. Marzec refund to you any commissions paid to him?

A. In that event I didn't have to pay him, because it was rejected. When he told me the mortgage had been approved, I had to get the money together.

Q. I see. Did you receive a written commitment from P.R.C.U. in connection with these mortgages?

A. Yes, I received quite a few.

235 Q. Did you always receive them?

A. No.

Q. From whom did you receive those commitments?

A. Signed by Mr. Brandt.

Q. Did Mr. Marzec deliver them to you?

A. Either mailed to me or he delivered them to me.

236 Q. Who advised you that the mortgage had been approved during 1949 and 1950 where you did not receive the written commitment?

A. Mr. Marzec.

By Mr. Manion: We have no further questions of this witness, your Honor. We will, however, at this time, offer in evidence Government's Exhibits 20 and 20-A which are the ledger card and the deposit slip relating to the commercial account of Joseph T. Marzec at the Pioneer Trust & Savings Bank which were identified by our stipulation yesterday, and Government's Exhibit 27-A, lettered consecutively through the alphabet, through the alphabet, through 27-OOO for identification, both inclusive.

By Mr. Struett: Your Honor, I will have my man check them during the noon hour, if we may have until 2:30.

By the Court: Oh, no, no. Let us get along.

By Mr. Struett: It will take a half an hour to three-quarters of an hour to check those.

237 By the Court: Very well. That will give you three-quarters of an hour for lunch. We have to get along with this case.

I will give you an hour and 38 minutes. 2:00 o'clock, ladies and gentlemen.

(Thereupon at the hour of 12:25 o'clock p. m. a recess was taken until 2:00 o'clock p. m. of the same day.)

238

• • (Caption—No. 55 CR 679) • •

Chicago, Illinois,
Wednesday, February 6, 1957,
2:00 o'clock p. m.

Court convened pursuant to recess.

Present:
Mr. Manion
Mr. Struett

And thereupon the following further proceedings were had herein:—

By the Clerk: No. 55 CR 679, the case on trial.

(Thereupon the following proceedings were had in open court, outside the presence and hearing of the jury:)

By Mr. Struett: If your Honor please, may I say something? I don't like to say this to you, but I want you to know we took very little time off for lunch
239 today, and we were back here in a hurry. We were

back at twenty-five to, and went out a quarter after or whenever you adjourned or 1:00 o'clock. I am doing the very best I can, or Mr. Marzec is. I haven't had a chance to talk to him yet. He is checking that against his record.

By the Court: Hurry him up.

(Thereupon there was an interruption in the proceedings.)

By the Court: Will you bring the jury in now?

By Mr. Struett: There is one check I think covering a refund where they reduced the mortgage.

By the Court: Yes, $100.00.

By Mr. Struett: There is another for $75.00 in there.

By Mr. Manion: We have completed our direct examination, your Honor.

(Thereupon the following proceedings were had in open court, in the presence and hearing of the jury:)

240 By Mr. Manion: Our offer of these exhibits is pending.

By the Court: Proceed, Mr. Struett.

HENRY S. BANACH, called as a witness on behalf of the Government, having been previously duly sworn and examined, resumed the stand and testified further as follows:

Cross Examination by Mr. Struett.

Q. Mr. Banach, I show you Government's Exhibit marked 27-A for identification and ask you to state what that is. It is a check dated September 8, 1949 for $75.00.

A. At one time I had purchased a property at the southwest corner of Blackstone and Marquette Road, back in 1949, and I gave or I paid one per cent commission to Mr. Marzec, and he claimed that I short-

changed him $75.00 so this check was issued to cover that $75.00.

Q. Is it is Mr. Marzec's recollection, although it is small, that he had advanced certain moneys for you on an appraisal and that was the refund on that appraisal. Could he be right or are you right?

241 A. I only know I have handed him a check for somewhere around $900.00, supposed to be not enough, that I still owed him $75.00 more, so I just paid him the balance.

Q. Was that on an appraisal or for commissions? We want to know that. He said it was for appraisal. Let's try to get at it.

A. I think that was the commission. I don't know what he done with it. The check was issued to his order.

Q. How long had you been doing business with the Polish Roman Catholic Union? How long had you been doing business over there?

A. The last time I started to do business with them was the first part of 19—the last part of 1948.

Q. Yes, but when did you do business with them before?

A. Oh, back in 1932, '3, '5.

Q. And then there was a space?

A. Then I never done any business since '35.

Q. Let me ask you one other matter here. When you made these payments to Mr. Marzec for commissions

242 in 1948 or '49 did you report these payments to the Government?

A. I did.

Q. And take them as a deduction?

A. I did.

Q. In both '49 and '50?

A. Yes.

Q. Both years?

A. Yes.

Q. And did you give the Government a 1099? You know what a 1099 is, that form?

A. Yes.

Q. And did you get a letter back to the effect that Mr. Marzec had not received those commissions?

A. I also mailed to Mr. Marzec form 1099.

Q. That's right, and did you get a letter back?

A. Of commissions paid him.

Q. Did you get a letter back?

A. I never got no notation from Mr. Marzec. For 1949 I am talking about now.

243 Q. Did you get a letter back from Mr. Marzec or Mr. Wilson, the accountant, that he never received this money?

Do you remember that?

A. Yes.

Q. Have you got that letter with you?

A. This letter is with the Government. I gave it to Mr. Manion, I think.

By Mr. Manion: When did you give those letters to the Government, Mr. Banach?

By the Witness: Yesterday, a copy of the letter.

By Mr. Manion: A copy of the letter?

By the Witness: Yes.

By Mr. Manion: To whom did you deliver that letter, to Mr. Chaddock?

By the Witness: To the fellow, to the man that sent the report, if Mr. Marzec didn't know me and so on and so forth.

By Mr. Manion: Was it the same man you gave your checks to?

By the Witness: What?

By Mr. Manion: Was it the same man you gave your checks to?

244 By the Witness: Yes.

By Mr. Struett: Now, will you mark these Defendant's Exhibits 12, 13 and 14?

(Thereupon said documents were marked Defendant's Exhibits 12, 13 and 14 for identification.)

By Mr. Struett:

Q. This is your correspondence, is it not, Mr. Banach? There is a letter from Mr. Wilson?

A. Yes, from Mr. Wilson addressed to me.

Q. There are two copies of letters from your files together with a 1099 form, are there not?

A. And I referred this letter to my auditor, Mr. Samuels. Now, Mr. Samuels answered that letter for me to the Commissioner of Internal Revenue, one copy. Another one went to Mr. Wilson.

Q. I see. Okay. Now, you know Mr. Brandt, you knew Mr. Kusper, you know Sobieraj, do you not? Or don't you?

A. Yes, I know of them. I know—I was not much acquainted. That is, I never got in much of a contact with Mr. Brandt, but I had frequent conversations with Mr. Kusper.

245 Q. About the matters that you have discussed here, your loans?

A. Not about this matter. Mr. Kusper acted independently, and, of course, we spoke on different subjects, politics and—

Q. I mean, but you didn't discuss the loans? What you want to say, I take it, is—

A. I don't think so.

Q. All right.

By Mr. Struett: That is all. I have no objection to these checks, your Honor.

By the Court: Very well. They may be received.

By Mr. Manion: We have no further questions.

By the Court: Do you have any other questions?

By Mr. Manion: We have nothing further.

The Court: Is there anything other than checks?

By Mr. Manion: Yes, there is the bank statement.

By Mr. Struett: This is the $75.00 check (indi-
246 cating): We will let it go in and if it becomes important, he can show his version of the check.

By the Court: Very well.

By Mr. Struett: If it is misplaced we will agree at a later date when the witness isn't here that they can be offered in evidence.

By the Court: What is it?

By Mr. Manion: Government's Exhibits 20 and 28 for identification, your Honor, being the Pioneer Savings Bank statements and a duplicate deposit slip relating to the deposit Marzec made. There are also a set of checks, or check stubs. Here is 20.

By the Court: Check stubs.

By Mr. Manion: There are two entries appearing on the check stubs? Stub Nos. 6524 and 6525 of Government's Exhibit 28 for identification.

I have no further questions.

By Mr. Struett: Just one second.

Those are all right, Judge.

247 By the Court: Have you got everything?

By Mr. Manion: Yes, sir.

By the Court: What are they?

By Mr. Manion: We are offering Government's Exhibits 20 and 28 for identification being a bank ledger card and a duplicate deposit slip.

By the Court: There is no objection?

By Mr. Struett: There is no objection. I take it,

rather than offering this book at a later date, you can read it in the record or just put it on a sheet of paper.

(Said documents, so offered and received in evidence, were marked Government's Exhibits 20 and 28.)

248 By Mr. Manion: I am offering Government's Exhibit 27-A through 27-OOO for identification, your Honor, being a series of checks identified and testified to by the witness Banach as being paid to the defendant Marzec or, in the alternative, having been cashed by him and the cash delivered to Mr. Marzec.

By the Court: Very well.

By Mr. Manion: Then, we are offering two entries appearing on Government's Exhibit 28 for identification being the stubs 6524 and 6525, which, I believe, if your Honor please, I will read into the record.

By the Court: Very well. They may be received.

(Said documents, so offered and received in evidence, were marked respectively Government's Exhibits 27-A through 27-OOO, both inclusive, and 28.)

By Mr. Manion: Ladies and gentlemen, the two entries appearing on Government's Exhibit 28 in evidence, which are offered in evidence are the check stub
249 entries: First, No. 6524, which is dated May 19, 1950, made to cash, four per cent commission, Joseph T. Marzec, in the amount of $22,000.00, loan by the P. R. C. U. on 6110 South Greenwood. It shows the check in the amount of $4,300.00.

Entry No. 6525, dated May 19, 1950, to cash, for four per cent commission to Joseph T. Marzec, $22,500.00 loan on 6345-47 South Greenwood Avenue. The amount of this check is $900.00.

On the preceding check, I made an error. The amount shown is not $4300.00; it is $880.00.

We have no further questions of this witness, your Honor.

By the Court: All right. Any further questions?

By Mr. Struett: No further questions.

By the Court: Step down, please.

(Witness excused.)

250 ARTHUR WILSON, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Manion.

Q. Will you state your full name, please?

A. Arthur J. Wilson.

Q. What is your address, Mr. Wilson?

A. My office address is 6054 Cottage Grove Avenue.

Q. What is your occupation or profession, sir?

A. I am a certified public accountant.

Q. And, as such, are you registered and licensed by the State of Illinois?

A. I am.

Q. How long have you been a registered certified public accountant, Mr. Wilson?

A. Since 1923.

Q. Were you so employed during the year 1951?

A. I was.

Q. Now, do you know the defendant in this case, Mr. Joseph Marzec?

A. I do.

Q. Have you at any time been hired or retained
251 to represent him as an auditor or as a certified public accountant?

A. I was.

Q. When were you first hired by him, sir?

A. I am not sure of the exact date but in the latter part of 1950.

Q. Now, who first referred you to Mr. Marzec, if you know?

A. Mr. Tyrrell Richardson.

Q. What is his profession, do you know?

A. He is an attorney at law.

Q. Did he represent Mr. Marzec at that time?

A. I believe so.

Q. When did you first meet Mr. Marzec?

A. Well, about that time, the latter part of 1950, I received a call from Mr. Richardson and I believe I went to Mr. Marzec's house on West Barry Avenue.

Q. Now, were you retained by Mr. Marzec to represent him as to any specific transaction or generally in accounting interests?

A. A specific transaction.

Q. What was the transaction, sir?

A. He was being investigated for income tax.

252 Q. Was there any particular item or items under question that you investigated at that time for Mr. Marzec?

A. Well, to begin with, I was informed by Mr. Marzec at the time that I visited his home that his books and records represented or supported the tax return that he had filed and that he had no other income to account for it.

253 Q. Now, did you examine his books and records at that time?

A. Several days afterwards. We took his records and bank accounts.

Q. When you say "we" are you referring to yourself?

A. Myself, that is right; my office.

Q. Did you compare his books and records for the years 1949 and 1950 with the tax returns which he had prepared for those years?

A. Well, at that time I think we only had the 1949 return. The 1950 return had not been prepared.

Q. I see. Did you examine the 1949 return?

A. I did.

Q. Did you examine his books and records?

A. I did.

Q. For the year 1949?

A. That is right.

Q. Were they in agreement?

A. With the return, yes, substantially.

Q. They were in agreement with the return?

A. Substantially, I would say.

Q. Did you interrogate Mr. Marzec as to whether 254 or not he had received any additional income other than as reported in his return?

A. I did.

Q. And what did he tell you?

A. That his total income was included in the return filed.

Q. Did you inquire of him as to whether or not he had any deductions or business expenses which were not reported in his books and records, or in his return?

A. I did.

Q. What did he tell you in that regard?

A. That the return was substantially correct.

Q. As to deductions as well as to income, is that correct?

A. As well as to income, that is right.

Q. Did there come a time subsequent to your employment by Mr. Marzec, that you examined his books and records for the calendar year 1950?

A. Yes, sir.

Q. Did you compare those records with the tax return filed by Mr. Marzec, filed for 1950?

A. I did.

Q. Did you prepare the original 1950 return, by
255 the way, Mr. Wilson?

A. No. No, sir.

Q. You did not?

A. No, sir.

Q. But you did compare that return?

A. I did.

Q. As to both income items and as to expenses and business expenses, is that correct?

A. That is correct.

Q. And specifically, did you examine his records insofar as they reported commissions received and commissions paid by Mr. Marzec during the calendar year?

A. As they were shown on his records, yes.

Q. As they were shown on his records, that is what I am referring to.

A. That is right.

Q. Did his books and records in those respects correspond with the original tax return for 1950?

A. That is correct.

Q. They were in substantial agreement?

A. That is right.

Q. Did you inquire of Mr. Marzec at the time of your examination of the 1950 records as to whether or not he had additional income or expenses which were not
256 reported either in his books and records or in his tax return?

A. I did.

257 Q. What did he tell you, if anything?

A. Well, the matter came to a head because he

brought a 1099 form to my office in which he was shown as having received commissions of, roughly, around $39,000.00 that were not included on his books.

By Mr. Manion: Will you mark this Government's Exhibit 30 for identification, please?

(Said document was thereupon marked Government's Exhibit 30 for identification.)

By Mr. Manion:

Q. Mr. Wilson, I show you a document marked Government's Exhibit 30 for identification which purports to be a 1099 form filed by Mr. Henry S. Banach representing commissions in the amount of $39,820.00 paid to Joseph T. Marzec during the calendar year 1950 and ask you if that is the 1099 form or a copy to which you refer?

A. It is.

Q. After he showed you this 1099 form, what took place, if anything?

A. I asked him, had he received this amount of 258 money and he informed me that he had not and then I wrote a letter—

By the Court: What was that answer?

By the Witness:

A. That he had not received the money and I explained to him that it was quite a serious matter because the matter was being reported to the Treasury Department and, on the basis of his statement to me, I wrote a letter to Mr. Banach in which we denied or, rather, in which we stated that Mr. Marzec denied receiving that amount of money and we sent a copy of that letter to the Treasury Department's processing division at Kansas City, Missouri.

By Mr. Manion:

Q. Mr. Wilson, I show you a copy of the document marked Defendant's Exhibit 12 for identification and ask

you if that is the letter to which you have just referred?

A. It is.

Q. Now, Mr. Wilson, on what did you base the statements made by you in Defendant's Exhibit 12 for identification?

A. The statements of Mr. Marzec.

259 Q. After you sent Defendant's Exhibit 12 for identification to Mr. Banach, what if anything next developed in the investigation of the audit of this case, to your knowledge?

A. Four or five days later I received a letter from another accountant representing Mr. Banach, in which he stated that Mr. Banach had evidence that he had paid the money to Mr. Marzec.

Q. Do you have that letter with you, sir?

A. Yes, I have.

Q. May I have it?

(Witness hands document to counsel.)

By Mr. Manion: Miss Reporter, I will ask you to mark Defendant's Exhibit 12 for identification as Government's Exhibit 31 for identification.)

(Thereupon said document was marked Government's Exhibit 31 for identification.)

By Mr. Manion: I will ask you to mark this as Government's Exhibit 32 for identification.

(Thereupon said document was marked Government's Exhibit 32 for identification.)

260 By Mr. Manion:

Q. Mr. Wilson, I will show you a document marked Government's Exhibit 32 for identification and ask you if this is the letter you received from Mr. Samuels?

A. Yes, it is the same letter.

Q. After receiving this letter from Mr. Samuels what if anything did you do in connection with your investiga-

tion as auditor of this client to have the difference between Mr. Marzec and Mr. Banach investigated?

A. I called Mr. Samuels and asked him to visit me at the office of Mr. Banach for the purpose of seeing their records and trying to reconcile their differences.

Q. Did you thereafter visit the office of Mr. Banach?

A. Yes.

Q. And did you see his records?

A. Yes.

By Mr. Struett: Set the time and place.

By Mr. Manion:

Q. When did you go to the office of Mr. Banach, as best you can recall?

261 A. I cannot tell the exact date or time, but it was subsequent to February 1951 and prior to September.

Q. I will show you a document marked Government's Exhibit 3 for identification, or in evidence — I beg your pardon — which is a photostatic copy of the amended individual income tax return for Mr. Joseph T. Marzec and Florence Marzec for the calendar year 1951 and ask you if you prepared that return?

A. This return is an amended return of the original return and has all of the same facts as in the original return, with one additional source of income stated.

Q. What is that source of income, or where is that stated in the return, Mr. Wilson?

A. It is stated on page 2, Schedule G, "Income from partnerships and other sources" and so forth, and it is the line $39,820.00, commission.

Q. How did that compare with the return filed by Mr. Banach?

A. It is the exact amount.

Q. Was there any income reported in the correspond-

ing schedule of the original return filed by Mr. Joseph
262 T. and Florence Marzec, Government's Exhibit 2 in evidence for the calendar year 1952, Mr. Wilson?

A. There is no amount mentioned.

Q. Now, directing your attention for the moment to Schedule C as appears in Government's Exhibit 2, and in Government's Exhibit 3 in evidence, "Total receipts from business or profession" and I ask you to compare the amounts appearing in both those schedules.

A. I have a little difficulty — this is a computation over here. In one return it is $38,991.31, that is, in the amended return and in the original return it is $36,991.31, a difference of $2,000.00.

Q. Was that correction an arithmetical correction, Mr. Wilson, or do you recall?

A. I don't recall.

Q. Were any additional expenses or deductions in connection with the commission business included by you in the preparation of Government's Exhibit 3 in evidence other than the commissions and deductions and expenses of Mr. Marzec which appear in Government's Exhibit 2 in evidence, being the original tax return for the year 1950?

263 A. I notice there is a difference of 25 cents in Schedule C.

Q. The 25 cents difference in Schedule C, is that right?

A. Yes, that is right.

Q. Were any deductions taken for commissions paid to others in connection with the additional income reported in Schedule G in Government's Exhibit 3 in evidence, being the return for the year 1950?

A. There were no deductions.

Q. There were no deductions shown?

A. No, sir.

264 Q. Now, Government's Exhibit 3 in evidence was filed on or about June 9, 1951, is that correct?

A. That's right.

Q. The amended return?

A. Yes.

Q. Did you examine the records of Mr. Banach prior to filing or the preparation of Government's Exhibit 3 in evidence, Mr. Wilson?

A. Yes, sir.

Q. And did that examination have any influence upon you in the preparation of Government's Exhibit 3 in evidence?

A. I am quite certain it did, sir.

Q. Did Mr. Marzec at any time prior to the filing of Government's Exhibit 3 admit to you or tell you he had received income from Mr. Banach?

A. He did not. As a matter of fact he denied receiving it.

Q. He denied receiving it. Did he persist in that denial even to the time of the filing of Government's Exhibit 3 in evidence?

A. To the best of my knowledge, yes, sir.

Q. I believe you told us you prepared Govern-
265 ment's Exhibit 3 in evidence. I direct your attention now to the lower corner of the page where the signature is provided for "other person preparing the return for the taxpayer" and in that portion I see the name of your firm, A. J. Wilson, CPA, is typed but no signature appears. Was the absence of your signature a matter of intention or inadvertence?

A. I would say it is inadvertence, just like it is common practice for any return prepared in our office to have our firm name typed on that line, and I do not recall any

specific reason for no signing it, since it did include to the best of my knowledge everything I knew about the case.

Q. Prior to the filing of Government's Exhibit 3 in evidence, did you interrogate Mr. Marzec about any other income received from him except from Mr. Banach?

A. I did.

Q. What did he tell you, if anything?

A. Well, I would say the statement was that he didn't receive any. There might be some minor errors or omissions but nothing that would be material.

266 Mr. Wilson, when did you discontinue your representation of Mr. Banach in connection with these tax matters?

By Mr. Struett: Mr. Marzec, you mean.

By Mr. Manion: Mr. Marzec, yes. I beg your pardon.

By Mr. Manion:

Q. I mean Mr. Marzec.

A. Shortly after September, 1952.

Q. During the time you represented Mr. Marzec and worked with him on this tax matter did he at any time admit to you receiving an income or the income Mr. Banach attributed to him?

A. No.

Q. Did he admit any part of it?

A. No, only to the extent we had that amended return.

Q. The extent of the amended return?

A. Yes, for 19—

Q. Did he admit receiving the income from Mr. Banach as set up in Government's Exhibit 2? Mr. Banach's name does not appear in Government's Exhibit 3 in evidence, does it?

A. No, it doesn't. Pardon me.

267 Q. Directing your attention now specifically to a bank deposit alleged to have been made by Mr. Banach

to Mr. Marzec's account, did Mr. Marzec ever at any time in your presence admit receiving the income shown in that bank deposit?

A. No, he didn't.

Q. Mr. Wilson, were you present in September of 1952, September 12, 1952, to be exact, at an informal conference held in the office of the Penal Division of the Internal Revenue Service in Chicago, Illinois?

A. I was present.

Q. In the course of that did you appear at that time representing —

A. Representing Mr. Marzec.

Q. Representing Mr. Marzec. Were Mr. Richardson and Mr. Marzec also present at that time?

A. They were.

Q. Who represented the Internal Revenue Service, if you recall?

A. I don't recall. There had been two different special agents working on the case. I think there was a Mr. DeWand, and I think maybe Mr. Smith. I am not absolutely certain whether Mr. Smith was present at that particular meeting.

268 Q. Was that conference requested by you on behalf of your client, Mr. Marzec?

A. That's right.

Q. The testimony as given by Mr. Marzec, your statements and Mr. Richardson's statements, were volunteered at that time, is that correct?

A. That's right.

Q. Mr. Wilson, were the statements made by you at that conference true and correct to the best of your knowledge at that time?

A. That's right.

Q. What effect if any did that conference have on your decision to discontinue representing Mr. Marzec in these matters?

A. Well, we were discouraged because we felt we were up against a brick wall.

Q. Exactly what took place at the conference, as best you can recall?

By Mr. Struett: If your Honor please,—

By Mr. Manion: I will withdraw that question.

By Mr. Struett: If you want to ask him if he was there. Let's get the whole thing.

By Mr. Manion: I will withdraw that question 269 at this time.

I will offer Mr. Reeb this afternoon.

By Mr. Struett: You might as well do that with him. It will save cross examination. I am not going to object to that if it took place.

By Mr. Manion: I will withdraw the question and I will call Mr. Reeb this afternoon.

I have no further questions at this time.

Cross Examination by Mr. Struett.

Q. Mr. Wilson, you are a certified public accountant?

A. Yes, sir.

Q. You are a former Bureau of Internal Revenue man? Didn't you used to work for the Bureau of Internal Revenue, or am I wrong?

A. No, no.

Q. How long have you been a certified public accountant?

270 A. Thirty-four years.

Q. You have had a lot of tax matters?

A. Very many.

Q. Very many. You have represented very many people?

A. Yes, sir.

Q. Now, have you got your work sheet here on what work you did for Mr. Marzec on his books and records?

A. We did no work other than to compare the records Mr. Marzec kept with the items that were in his return. If you will recall, Mr. Marzec himself is an accountant and he did the actual detail of preparing his returns.

Q. You have no work sheets at all?

A. None whatsoever.

Q. Do you remember what books you went into?

A. Well, he had — well, I would rather not try to identify them at this time, because I don't remember.

Q. Now, would you say that you went through his cancelled checks?

A. I did that, yes.

Q. What else did you go through?

271 A. Well, he had a ledger or a type of ledger in which we were able to trace the various expenses as stated in his books of account into the return.

Q. Now let me ask you this—

By Mr. Struett: (Addressing Mr. Manion) Where is that letter?

(Mr. Manion handed a document to Mr. Struett.)

By Mr. Struett:

Q. As I understand this situation, around February 24, 1951 you wrote a letter to Banach when you had the benefit of Defendant's Exhibit marked for identification—

By Mr. Struett: (Addressing Mr. Manion) Now you have marked it your exhibit, is that right?

By Mr. Manion: Yes.

By Mr. Struett: I have had it marked as mine.

By Mr. Manion: I am going to offer it as my exhibit.

By Mr. Struett: I have marked it. Didn't she mark it?

By Mr. Manion: It is our exhibit.

272 By Mr. Struett: It is now marked Government's Exhibit 30 which I will use.

By Mr. Struett:

Q. You had the benefit of form 1950, didn't you?

A. 1099, you mean.

Q. Yes, form 1099 for 1950?

A. Yes.

Q. $39,000.00?

A. Yes.

273 Q. Now you talked to Mr. Marzec and he said he didn't get this money at all?

A. That's right.

Q. You are positive of that?

A. That is right.

Q. Now you wrote this letter upon that representation of Mr. Marzec entirely, is that correct?

A. That's right.

By Mr. Struett: Now, did you have that original letter that he got back?

(Document handed to Mr. Struett.)

By Mr. Struett:

Q. Now, four days later you got a letter reading as follows—may I read it to him?

It is dated February 28, 1951:

By Mr. Manion: We are going to offer both of these in evidence.

By Mr. Struett: I am not having any objection; I will guarantee that.

By Mr. Struett:

Q. You wrote this letter addressed to Mr. Henry S. Banach and it says this:

"Your letter addressed to our client, Mr. Henry S. Banach, was forwarded to us for attention. We

274 would like you to know Mr. Banach had discussed with us the payments during the course of the year to Mr. Joseph T. Marzec. Mr. Banach told us in the first instance that Mr. Marzec wanted cash as his commissions on the mortgages which he placed before Mr. Banach. We told Mr. Banach at that time that if Mr. Marzec wanted cash and if it was necessary for him to do business with him that he note on each check payable to cash the proceeds going to Mr. Marzec on the check stubs. We also advised him that at the end of the year he had to file an information form with the Treasury Department.

"Mr. Banach has complied with all the necessary rules and regulations. The fact that Mr. Marzec denies having business dealings with Mr. Banach can be disproven without any trouble. As a matter of fact, we too are writing to the Commissioner of Internal Revenue advising him of your letter to our client, at the same time letting him know our circumstances.

275 We are writing you this letter because the amount received by Mr. Marzec from Mr. Banach as commissions is taxable income to him."

Now, did you ever get a more straight, forthright clear letter from a firm of certified public accountants as to a true situation? Did you ever in your life?

A. I was working for Mr. Marzec.

Q. You are Mr. Marzec's accountant?

A. That is right.

Q. Could you have gotten anything plainer, truer, or anything else?

A. My client told me—

Q. Let's just take your word for it. He told you he had never received it, but you certainly had pretty strong evidence that there was some proof, didn't you?

A. Yes, sir.

Q. Now, when did you go over and talk to Mr. Banach?

A. As soon as convenient.

Q. Was it convenient in another two days or the next week?

276 A. Within the next two or three weeks, or as soon as Mr. Samels could make the arrangement with Mr. Banach.

Q. So that was within the next two or three weeks?

A. That is right.

Q. It wasn't any longer than that?

A. I don't believe so.

Q. You were satisfied beyond any question of doubt, weren't you, as to, let us say, a scientific certainty? Let's put it that way.

A. May I refer you to the letter in which Banach's accountant states these checks were mostly drawn to cash?

Q. Yes.

A. And the only evidence that was going to be presented would be the statement of Banach versus the statement of Marzec, because there wasn't any written evidence.

277 Q. You were not too sure about it?

A. I certainly wasn't. My client was denying it.

Q. Let's get your mental reaction.

A. The only basis of defense my client has is to prove this report. All of the income I mean, and if he is stating somebody is accusing him of receiving income he is not getting, and I am trying to protect him, I want to make sure they are not going to be able to prove he did get it.

Q. Look on your amended return in his behalf, reporting all that income. You looked at that, didn't you?

A. That's right.

Q. You must have been sure in your own mind then, or you would not have prepared the return?

A. I don't know how many meetings later with Mr. Marzec this decision was arrived at. I don't know how much later that was. We have here a letter in the file which states this return was filed somewhere late in the summer of 1951.

Q. June 29th?

A. Well, I don't know the exact date, but it was sometime not immediately after my visit to Banach, but
278 sometime later, and at the time the return is amended and filed we had the benefit of advice from his attorney, and probably some persuasion put upon him or something has to be done about that item, and at that time the amended return was prepared.

Q. All right. Let's put it another way. Did he admit by June 29, 1951 that he got this twenty-nine to thirty-nine odd thousand dollars?

A. He does by signing that.

Q. I mean, did he admit it to you?

A. That's right, he had to, because it is in the return.

Q. I don't mean the return. Did he ever say, yes, I got the $29,000.00?

A. I don't think he ever said that, to tell you the truth.

Q. He didn't say that?

A. No, I don't think he did.

Q. Let's be frank with you. February 28th, to give you a month to see Banach. Then you had some doubt in your mind whether this man got the $39,000.00?

A. In the face of the letter, yes.

279 By Mr. Struett: Mark this Defendant's Exhibit 15. Make it 15-A and B. It is very important.

(Thereupon said document was marked Defendant's Exhibit 15, 15-A and 15-B for identification.)

By Mr. Struett:

Q. I understood you to say that you represented many tax payers?

A. That's right.

Q. You have appeared before before various administrative bodies?

A. That is right.

Q. On their behalf?

A. Yes, that's right.

Q. And in their defense?

A. That's right.

Q. Now I will show you Defendant's Exhibit 15-B and ask you if that is a transcript of what occurred before the Intelligence Unit when Mr. Marzec appeared, and you as his counsel, and were those statements in substance made?

By Mr. Manion: We will stipulate to them, Mr. Struett.

280 By Mr. Struett: Just a minute. I don't want any stipulation from you people.

By the Witness:

A. This appears to be substantially correct.

By Mr. Struett:

Q. I want to read you part of it. You were there representing Mr. Marzec, is that right?

A. Mr. Marzec, that's right.

Q. (Reading):

"Have you any further statement you would like to make?

"A. No."

Wait a minute. I want to go back a little bit further. I am sorry.

281 Q. This is on April 12, 1951, when you were at the Intelligence Unit representing Mr. Marzec, and there were present Mr. Marzec, Mr. Wilson, the accountant—

that is, you, representing him—then there was Mr. Osheroff, Mr. Conrad, the Internal Revenue agents, and Mr. Johnson, a special agent. He was interrogating.

Mr. Marzec was asked:

"Q. Have you any transactions with Henry Banach?

"A. Prior to February 4, 1951, I received a notice from Henry S. Banach regarding some commissions paid."

That is form 1099.

"This notice was received on form 1099. Subsequently it was returned to Banach by my representative, Arthur Wilson, with a letter stating no money was paid on any loans or commissions. I also informed through my representatives to the Commissioner of Internal Revenue I had not received the claimed commissions nor had I rendered any service on behalf of Banach for which any payment should be made."

282 That answer was made in your presence?

A. That is right.

Q. You represented this man?

A. That is what I said, sir.

Q. Then they asked Mr. Marzec if he had anything further to say, and then this:

"Mr. Wilson: Is there anything else or what do you care to say?

"The only statement I would like to make to the Banach matter, my client informed me of this 1099, and we took such steps as we thought proper to bring it to the attention of the Government."

That is your statement?

A. That's right.

Q. Now, do you think that you on behalf of this man, with the knowledge you then had, properly represented him over there?

By Mr. Manion: I object.

By the Court: Sustained.

By Mr. Struett:

Q. Do you think your statement or his statement was true?

By Mr. Manion: I object to that as calling for
283 speculation.

By the Court: He may answer.

By the Witness:

A. Now, to what statement do you refer?

By Mr. Struett:

Q. His statement to the Intelligence Unit on April 12, 1951, and your statement to him.

A. I think that at the time the statement was made I was justified in making it, because up to that time even though I had visited Banach's office I had not seen enough evidence nor did I make an audit of Banach's books. I was only acquainted with the case that gave rise to questioning my client. I was not at Banach's office more than half an hour, at the most. I explained what my purpose was, and they showed me a cash book in which they had written out "Joseph T. Marzec" so much money. That still didn't prove he had gotten it. They could have built up a tax fraud just as he could have, but denied it.

The only thing that came up that gave any evidence whether my client was going to be licked, they showed me two checks made payable to Joseph T. Marzec and said that was his endorsement. I had no way, in
284 other words, other than that of knowing. The mere passage of purported cash, I mean. I had as much reason to believe Marzec as I had to believe Banach.

Q. Wouldn't it be better—I am just asking you this question as a certified public accountant continuously rep-

resenting taxpayers before the tax bodies, of saying, "We have got that and we send it in" wouldn't it be the proper representation for you to have said that?

By Mr. Manion: I object to that, your Honor.

By the Witness:

A. Personally, I think—

By the Court: Sustained.

By the Witness:

A. —that he got good representation.

By Mr. Struett:

Q. Let me ask you this: Did you ever ask Marzec if he got any other cash?

A. Yes.

Q. Did he ever tell you that he did?

A. No, except a transaction with Mr. Max Miller
285 was mentioned, some of which was reported in the return, and at Mr. Marzec's request we visited the office of Mr. Max Miller and attempted to trace the entries on Miller's records against the entries made on Marzec's.

286 Q. Now, let me ask you this: Did you ever ask him about how this business was run out there, what its functions were?

A. I didn't.

Q. Did you ever ask him about how he happened—when you got that letter back from this certified firm of public accountants, did you ever ask him how he happened to be getting $39,000.00 when he was employed there? Did you ask him that?

A. I didn't ask him that, no.

Q. Did you ever ask him whether he shared those commissions with anybody?

A. Not that I can recall.

Q. Would you say you did or would you say you didn't?

A. You cannot say something that you don't know.

Q. All right. When you had this letter from these public accountants and when you had these conversations with Mr. Marzec, you said you couldn't make up your mind that there was cash involved, is that correct?

A. That is right.

Q. Now, is is true that you told Mr. Marzec that
287 if there was cash involved it would be hard to trace, or the Government would find it hard to trace, or something of that substance?

A. Those things might have been discussed with his attorney and myself being present.

Q. And Marzec?

A. Sure.

By Mr. Struett: All right. That is all.

By the Court: Anything further?

By Mr. Manion: Just one question.

Redirect Examination by Mr. Manion.

By Mr. Manion: Miss Reporter, I will ask you to mark this as Government's Exhibit 34 for identification.

(Thereupon said document was marked Government's Exhibit 34 for identification.)

By Mr. Manion:

Q. Mr. Wilson, I show you a document marked Government's Exhibit 34 for identification and direct your attention to the last paragraph appearing at page 8
288 and continuing on page 9. I ask that you peruse that and then I want to ask you a question.

A. Yes, I recall this.

Q. Now, having examined pages 8 and 9 of Government's Exhibit 34 for identification, Mr. Wilson, did Mr. Marzec at any time admit to you the receipt of any part of the moneys Mr. Banach claimed to have paid him during 1950?

A. No, except I don't really recall the basis of the amended return.

Q. Well, you, at this conference in 1952, stated on behalf of Mr. Marzec that he did admit the receipt of the sum of $1950.00 deposited to his account, did you not? You also admitted the receipt of two checks, did you not?

A. In the testimony there, I testified that I had seen the two checks and the duplicate deposit ticket.

Q. Well, your admission of the receipt of that money at that time was, technically, for the purpose of your conference?

A. Yes.

Q. Although Mr. Marzec at that point still had
289 not admitted receipt of that money, is that correct?

A. That is correct.

By Mr. Manion: That's all.

Recross Examination by Mr. Struett.

Q. I just want to ask you: I don't quite recall your statement but I will do the best I can, you said something on direct examination about this conference that was held in the Treasury Department that you and Mr. Richardson and Mr. Marzec attended. That is this transcript here (indicating)?

A. That—I am not sure. This apparently is the transcript.

Q. He has had it marked.

A. The transcript of April, 1951.

Q. Yes.

A. In April.

By the Court: Now, what is "this transcript"? I thought it was 1952.

By Mr. Manion: This is 1952, your Honor.

290 By the Witness: This is the 1952?

By Mr. Struett: Yes.

By the Witness: The statement on page 8 and 9 is the same as has just been testified to, with the exception it has more detail as to what happened at my visit.

By Mr. Struett:

Q. This was the final conference, was it not, within the Internal Revenue Service, to determine whether or not Mr. Marzec's case or this case should be sent to Justice with a prosecution recommendation, isn't that true?

By Mr. Manion: I object to that as being beyond the knowledge of the witness.

By Mr. Struett: If he knows. I mean, he is an experienced accountant.

By the Court: Well, what do you say? Do you know?

By the Witness: Well, I am not sure, but I do know that subsequently, shortly after that, we received notice that the case had been forwarded.

By Mr. Struett:

Q. To the Justice Department?

291 A. That is right.

By the Court: Anything else?

By Mr. Struett:

Q. What did you do with that notice that you received, notice that it had been forwarded?

A. I have a notice.

Q. Let's see it.

A. Will you put these up there, please?

(Handing documents to counsel.)

Q. Sure.

(Witness produces document.)

By Mr. Struett: Mark that Defendant's Exhibit 16, please.

(Thereupon said document was marked Defendant's Exhibit 16 for identification.)

292 By Mr. Struett:

Q. Now, can I have that envelope, too, that you took it out of?

A. I don't know—

Q. You took it out of an envelope, do you remember?

A. Oh, yes.

(Witness produces document.)

By Mr. Struett: Mark this Defendant's Exhibit 16-A for identification.

(Thereupon said document was marked Defendants' Exhibit 16-A for identification.)

By Mr. Struett:

Q. Now, have you got a copy of a letter in your file where you advise Mr. Marzec of this letter?

A. No.

By Mr. Struett: I think that is all.

By Mr. Manion: May I see that, Mr. Struett?

By Mr. Struett: Yes.

293 *Redirect Examination by Mr. Manion.*

Q. Mr. Manion, after receiving Defendant's Exhibit 16 for identification, did you advise Mr. Marzec this file had been forwarded to the Department of Justice?

A. I am quite sure I did.

Q. Do you know for a fact whether you did or did not?

A. Well, I am almost certain. I mean, that would be the usual procedure, as well as I probably informed him and Mr. Richardson, too, who is in the case.

By Mr. Manion: I have no further questions.

Recross Examination by Mr. Struett.

Q. You have no record of this thing; just that you sent him a letter?

A. No.

Q. Now, isn't it a fact that both you and Mr. Richardson did nothing on Marzec's behalf in this case after this conference in Mr. King's office on September 12,
294 1952?

A. Physically, no.

Q. Or mentally, either, unless you say you may have notified Mr. Marzec of this letter?

A. Well, I would have to ask you what could you do mentally?

Q. Well, did you do anything? That is what I am getting at.

A. Well, I informed him of the progress of the case, yes.

Q. Have you got any letters to that effect?

A. No.

By Mr. Struett: That is all.

By the Court: Anything further?

By Mr. Manion: No further questions of this witness, your Honor.

By the Court: Step down.

(Witness excused.)

By the Court: Take a short recess, ladies and gentlemen.

(Thereupon a short recess was taken.)

295 By Mr. Manion: Your Honor, Mr. Bruno Sobieraj has indicated to the Government that he would like to testify in this case. At this time we would like to call him in to the witness stand.

By the Court: Very well.

By Mr. Manion: Mr. Sobieraj, please.

BRUNO L. SOBIERAJ, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Manion.

By Mr. Manion: Will you please mark this Government's Exhibit 33 for identification?

(Thereupon said document was marked Government's Exhibit 33 for identification.)

By Mr. Manion:

Q. Will you state your full name, please?

A. Bruno L. Sobieraj.

Q. Spell the last name for the reporter, please.

296 A. S-o-b-i-e-r-a-j.

Q. What is your address, Mr. Sobieraj?

A. 1261 Wolcott Street.

Q. Is that Chicago?

A. Chicago, Illinois.

Q. What is your occupation or profession?

A. Real estate appraiser and broker.

Q. Mr. Sobieraj, you are a defendant in this case, are you not?

A. Yes, sir.

Q. And did you request to testify at this time?

A. I do.

Q. Are you testifying of your own free will; is that correct?

A. I am.

Q. And of your own personal choice?

A. Yes, sir.

Q. Now, Mr. Sobieraj, you have previously entered a plea of guilty, have you not, to one count of this indictment? You have entered a plea of guilty to this one count of this indictment?

A. I did.

297 Q. Mr. Sobieraj, when did you first become acquainted with the defendant, Joseph Marzec?

A. Oh, about '47, '48, somewhere in those years. That is about around in those years.

Q. Now, during the years 1947 and subsequently, did you receive commissions from Mr. Marzec in connection with mortgage applications made by various real estate brokers to the Polish Roman Catholic Union for mortgages?

A. I did.

Q. Did you have any function or duty to perform in connection with those mortgage applications?

A. I appraised the properties.

Q. Were you an employee of the P. R. C. U. or were you an outside appraiser?

A. I was an outside appraiser.

Q. Did you prepare an appraisal for each of these properties?

A. I did.

Q. Now, will you tell us as best you can recall in your own words the circumstances under which you first received a commission from Mr. Marzec?

A. Well, I heard that there were commissions being passed and I had asked for some of it and, through
298 arrangements with Mr. Marzec, I received part of the commissions.

Q. What was your agreement with Mr. Marzec with regard to receiving parts of these commissions?

A. There was no definite agreement. It was based, all around, anywhere from one point, one-half a point, from half to one point on a loan.

Q. Now, as you received commissions from Mr. Marzec, did you record those commissions anywhere?

A. Yes. They are reported in our daily ledger.

Q. Who kept your daily record?

A. Mrs. Stanczewski.

Q. Who is Mrs. Stanczewski?

A. Mrs. Stanczewski was a partner in the firm of W. Stanczewski & Company.

Q. Was that the name of your company?

A. That is right.

Q. Were you and Mrs. Stanczewski co-partners?

A. Correct.

Q. In this daily ledger—

By the Court: Who were the co-partners? I didn't catch that.

299 By Mr. Manion:

Q. Who were the co-partners?

A. Mrs. Stanczewski and myself.

By the Court: You were co-partners?

By the Witness: In the firm of W. Stanczewski Company.

By the Court: What was the business of that company?

By the Witness: That was real estate sales and appraising.

By the Court: I see.

By Mr. Manion:

Q. Now, Mr. Sobieraj, would you tell us what you said and what Mr. Marzec said on the first occasion in 1947 when you discussed the commissions?

A. Well, I say 1947, but don't quote me on it, but it is close around there.

Q. Could it have been 1946?

A. No, it wouldn't be earlier. I don't believe it was earlier. It was later if it was anything.

Q. Did this occur during the time Mr. Brandt was treasurer?

A. Yes.

300 Q. Now, what did you do or agree to do for Mr. Marzec in return for these commissions?

A. Well, I made the appraisal for the property and made a fair appraisal of the property but he was getting a commission, so, I thought I could get part of it myself.

Q. Did he agree to give you a part of these commissions?

A. Yes, he did.

Q. What was your agreement?

A. After the loan would go through, he would give me a break on the commission, running, say, roughly speaking, from one half to one point, something like that.

Q. Now, were you to receive that commission on each and every loan that passed through?

A. No.

Q. What was the standard that determined the loans upon which you were to receive commissions, if there was a standard? How did you determine which loans you were to receive commissions on?

A. Well, when it was his loans, then we got commissions. Sometimes we would have to find out who made the loan and most of the time he would say, "It is
301 my loan," and when the loan went through, sometime later I received a commission from him.

By the Court: Did you get paid otherwise?

By the Witness: A fee.

By Mr. Manion:

Q. What was your appraisal fee?

A. From $15.00 to $50.00.

Q. And by whom were those appraisal fees paid, Mr. Sobieraj?

A. The Polish Roman Catholic Union.

302 Q. And were those paid to you by check or in cash?

A. Check.

Q. Now, the payments that you received from Mr. Marzec, were those payments received by you in cash or by check?

A. Some in cash and some by check.

Q. Were all of these payments recorded in the cash book, the daily cash book, by Mrs. Stanczewski? To the best of your knowledge?

A. To the best of my knowledge, they were recorded.

Q. Was she charged with keeping all of the cash records and cash receipts?

A. She was, yes.

Q. Did those include personal receipts paid to yourself as well as the W. Stanczewski Company?

A. Everything was recorded in the book.

Q. Mr. Sobieraj, I show you a document marked Government's Exhibit 33 for identification, and ask you if you can identify that book.

A. Yes. It is our office book.

Q. Now, were the entries appearing in that book made on or about the date that they bear?

303 A. Yes.

Q. Were those entries made in the regular course of your business?

A. Yes, sir.

Q. Was it in the regular course of your business to make such entries and to keep such a record as this?

A. Yes, sir.

Q. Now, in addition to the recording of the commissions, Mr. Sobieraj, are the appraisals, the appraisal fees received by you, also recorded?

A. Yes, sir.

Q. In Government's Exhibit 33 for identification?

A. Yes, sir.

Q. Are all cash receipts of W. Stanczewski Company, or from Mr. Marzec, or any other source recorded in this book, to your knowledge?

A. Yes, sir.

Q. All recorded, is that correct?

A. Yes, sir.

Q. Now, Mr. Sobieraj, did you report, for income tax purposes, the cash received by you from Mr. Marzec during the years 1949 and 1950?

304 A. No, I did not.

Q. Did you at any time have a conversation with Mr. Marzec relative to the reporting of these cash receipts for income tax purposes?

A. Yes, sir.

Q. And when did that conversation take place, as best you can remember?

A. Well, it is pretty hard to say when, but whenever he paid in cash he would withhold about twenty per cent and he said, "That is for income tax; I am paying in income tax on this," on the money that he gave.

Q. He told you he was going to pay the income tax for those funds?

A. Yes, correct, sir.

Q. Now, did you receive any cash from Mr. Marzec during the years 1949 and 1950 to your knowledge, which is not reported on Government's Exhibit 33 for identification?

A. Not to my knowledge, no.

Q. Mr. Sobieraj, I direct your attention to the page of Government's Exhibit 33 for identification, in which the cash receipt of W. Stanczewski and yourself are re-
305 corded for the 17th day of June, 1950?

A. Yes, sir.

Q. Directing your attention to an item there appearing as "loan commission" for two addresses on Kedzie

and Washington Avenue—

A. $800.00.

Q. Now, directing your attention to the next entry, "income tax $160.00", what does that entry indicate?

A. He withheld $160.00 for the income tax he was to pay.

Q. Was that your agreement with Mr. Marzec?

A. Yes, sir.

Q. And he told you that he would pay the taxes on the cash, is that right?

A. Yes, sir.

Q. Now, did you report for income tax purposes all checks received by you from Mr. Marzec in the payment of commissions?

A. I did, sir. I did. I received from Mr. Marzec—what do you call it—slip 1099, I believe, for reporting.

Q. Now, did he include any of the cash paid to you in those 1099 reports?

306 A. No, sir.

Q. He didn't.

A. I don't believe he did.

Q. You realize now, do you not, that you were obligated to report for your personal tax purposes the cash received by you?

A. Your first phrase?

Q. You understand that, do you?

By the Court: He can't hear you.

By the Witness: I didn't hear your first phrase.

By Mr. Manion:

Q. I beg your pardon. Mr. Sobieraj, do you now realize you should have reported for income tax purposes, the cash received by you?

A. I do very much, now, yes, sir.

Q. Even though you had this agreement with Mr. Marzec?

A. Yes, sir.

Q. Did you rely on your agreement with Mr. Marzec in not reporting your tax?

A. I relied on him that he would pay it.

Q. Mr. Sobieraj, do you know the total amount of commissions paid to you by Mr. Marzec during the
307 calendar year 1949?

A. It is all in the books, sir. I wouldn't know it offhand.

Q. You would not know it without totalling it up?

A. Yes.

Q. It is all in the books?

A. Yes.

Q. And your answer, as to 1950, would that be the same?

A. Yes, sir, the same.

308 Q. Directing your attention, Mr. Sobieraj, to the entry in the book for May 27, 1950, on which appears several loan commissions—

A. Yes, sir.

Q. I direct your attention to an item appearing there, "Directors, $105.00," and ask you to explain that.

A. That was withheld for the taxes.

Q. That item is—

A. This is directors. This was withheld for the directors.

Q. Did you pay that to the directors?

A. No. That was withheld from the total, six twenty.

Q. Mr. Sobieraj, did Mr. Marzec at any time pay to you any cash to be paid by him to Mr. Brandt or Mr. Kusper?

A. I beg your pardon?

Q. Did Mr. Marzec ever give you cash to be paid to Mr. Brandt or Mr. Kusper?

A. No, sir.

Q. All cash delivered to you was for yourself?

A. For the office.

Q. And for Stanczewski?

309 A. That is correct.

Q. That is, cash from Mr. Marzec, is that correct?

A. Correct, sir.

By Mr. Manion: I have no further questions, Mr. Sobieraj.

Cross Examination by Mr. Struett.

Q. Let me ask you this, Mr. Sobieraj: Did you ever deny having received any cash from Mr. Marzec?

A. In what way should I deny it? What do you mean?

Q. Did you ever give the Government an affidavit that you never received any cash from Mr. Marzec?

A. I signed an affidavit to the Government that I received money from Marzec.

Q. Any cash?

A. And, to my knowledge there was no mention made of cash.

By Mr. Struett: Do you have that affidavit here, Counsel?

By Mr. Manion: Yes.

(Handing document to counsel.)

310 By Mr. Struett: Miss Reporter, mark this Defendant's Exhibit 17 for identification, please.

(Thereupon said document was marked Defendant's Exhibit 17 for identification.)

By Mr. Struett:

Q. I invite your attention to this fifth paragraph, "I did not—"

By Mr. Manion: I object to Mr. Struett reading that. Are you impeaching the witness, Mr. Struett?

By Mr. Struett: I am just asking him a few questions now.

By Mr. Manion: I think it would be proper to show it to him.

By Mr. Struett: Oh, I certainly want to show it to him. I beg your pardon. That is my mistake.

By the Witness: You say the fifth paragraph?

By Mr. Struett: Yes.

By the Witness: I did not receive any commis-
311 sion from anyone other than reported on my return.

By Mr. Struett:

Q. Yes. That is true or false?

A. I wouldn't say that is true—or, I wouldn't say it was false, because, I got the commission from Marzec. This strictly was from Marzec. "Did you receive any commission from anyone other than reported."

Q. Anyone other than?

A. Than reported.

Q. I see. Now, you appeared before the Grand Jury that returned this indictment, didn't you?

A. Sir?

Q. You appeared before the Grand Jury that returned this indictment, did you not?

A. I did.

Q. You testified that you received no commissions, did you not?

A. Oh, no. I testified I received commissions.

By Mr. Struett: Have you got the Grand Jury transcript here?

By Mr. Manion: I have.

By Mr. Struett: May I see it, please?

By Mr. Manion: First request Judge Barnes if
312 you may.

By Mr. Struett: May I see it, your Honor?

By the Court: Any objection?

By Mr. Manion: We have no objection, your Honor, if the Court, in its discretion, wishes to release the transcript.

By the Court: Let's see it. How much of this do you want? Have you seen it?

By Mr. Struett: I haven't seen it yet.

By the Court: Step into the jury room, ladies and gentlemen.

(Thereupon the following further proceedings were had in open court, outside the presence and hearing of the jury:)

By the Court: I haven't read it all. It starts at page 389 and I have looked over to—there is no number on this page.

By Mr. Manion: I believe in that volume, your Honor, the reporters only numbered the initialed pages of each witness.

By the Court: Well, now, what I want to ask you is, have you seen this?

By Mr. Struett: I haven't seen it, Judge.

313 By the Court: Well, you have got it out here before the jury and the jury will want to know about it. Suppose you look at it and then you don't want it?

By Mr. Struett: I have to take that chance. I went along with these people and I have to take the chance that these people get the whole thing.

By the Court: If you don't want to use it, suppose your opponent does?

By Mr. Struett: I have to take that chance. I don't know what is in it. May I see it? I want to see what is in it.

By the Court: I am going to act on this in front of the jury.

Bring in the jury.

(Thereupon the following further proceedings were had in open court, in the presence and hearing of the jury:)

By the Court: The defense asked for the production of this transcript. The Government has produced it. The Government, as I understand it, has no objection to
314 its being released.

By Mr. Manion: No, your Honor, we do not.

By the Court: Very well. It is just the testimony of Mr. Sobieraj.

By Mr. Struett: I think this is the same—it isn't numbered.

By Mr. Manion: Pardon me?

By Mr. Struett: I am still reading through. I haven't seen any change.

By Mr. Manion: It is the same.

By Mr. Struett: All the way to the end?

By Mr. Manion: Oh, yes.

By the Court: Apparently he is the last witness in that transcript. This Sobieraj is the last witness in that transcript.

By Mr. Manion: That is correct, your Honor.

315 By Mr. Struett: I have read it, your Honor. It is kind of hard—you better handle this Grand Jury testimony and pick out the part of Sobieraj.

By the Court: I didn't hear what you said.

By Mr. Struett: I asked him to pick it out. I did not want to see any other part of it, your Honor. It is Grand Jury testimony.

By the Court: Any further cross examination of this witness?

By Mr. Struett: What?

By the Court: Any further cross examination?

By Mr. Struett: I have got a lot, your Honor. I would like to read this over and study it and I would like to proceed with this witness tomorrow morning. This is very important to my case. I want to take this home.

By the Court: No, you can't take it away with you.

By Mr. Struett: Just his.

316 By the Court: No.

By Mr. Struett: All right.

By the Court: It is a Grand Jury record.

By Mr. Struett: All right.

By the Court: Can you go ahead for three or four minutes?

By Mr. Struett: Oh, I can ask him a few questions.

By Mr. Struett:

Q. Who did you say made this record, your partner?

A. Mrs. Stanczewski.

Q. She is your sister-in-law, isn't she?

A. No; she is my mother-in-law.

Q. I knew it is an in-law. I have got it wrong, the relation. Let me ask you something while we are at this thing—I want you to tell me, to the best of your recollection—I show you Defendant's Exhibit 17 marked for identification and I want you to tell me how you happened to sign it, where, who was present, and under what circumstances, to the best of your recollection?

A. To the best of my recollection, I was called in to Mr. Wolfe's room, into his office. I don't know that

317 this is his office. It is marked 1020. And there was a stenographer present and Mr. Wolfe asked these questions.

Q. Those are the only questions that were asked you?

A. Evidently that is the only thing, because that's all they got there.

Q. Now, had you made prior arrangements to go there?

A. They asked me to come down at a certain time.

Q. Who asked you?

A. Well, from Mr. Wolfe's office.

Q. Did you know what questions were going to be asked you?

A. No.

Q. Was Mr. Brandt there and Mr. Kusper there?

A. No, sir.

Q. Do you know whether or not they, on or about the same time, signed similar affidavits?

A. I don't know.

By Mr. Manion: I object as to the relevancy.

By Mr. Struett: I am asking him if he knew it, 318 and that is all I am asking him. He says he doesn't.

By Mr. Struett:

Q. There were no other questions asked you—

A. No, sir.

Q. —or anything else?

A. No, sir.

Q. Well, now, I will ask you to look at this thing again. Was that affidavit prepared for your signature before you got there?

A. No, sir. I had to wait about a half hour after they asked these questions and the stenographer went out and brought the typewritten sheet which I signed.

Q. Well, that isn't question and answer, sir. That is just an affidavit.

A. Well, it is an affidavit. First, naturally, they asked me what my name is, and, well, I answered them here. They asked me that. And then they asked me what I am doing, and I answered. In my mind, I would answer it, but as you call it, an affidavit, that is something I won't argue.

Q. Well, then, did Mr. Wolfe dictate the affidavit?

A. No, sir.

319 Q. To the girl or did she go out and write it, or was the affidavit all prepared for you?

A. The girl came in and sat across the room—across the desk from me, and Mr. Wolfe asked me my name and all these things. That is why I say it is question and answer. And, she took it down in shorthand, and then, about a half hour later she came in. Well, I say a half an hour, but I don't really know how long, and, she brought this down.

I read it over and I signed it.

Q. Was Mr. Wolfe in with you all the time?

A. Yes, sir.

Q. Well, what I am getting at, did the girl prepare that, then, from the questions and answers?

A. Yes, sir.

By Mr. Struett: Do you have a transcript of his examination?

By Mr. Manion: No, I don't.

320 By Mr. Struett:

Q. Now, I want to ask you just a couple of general questions and then I would like to be relieved until tomorrow morning. You say here or Mr. Manion put it to you that you went and made your deal with Mr. Marzec for this share of these commissions?

A. Correct, sir.

Q. Now, isn't it a fact, just between—just a plain fact, that in order to get a loan through that Polish Union, you had to get the approval of the treasurer and his brother, Brandt, yourself; you had to get an appraisal for the value of it and you had to clear the legal details through Mr. Kusper and the three of you gentlemen in conjunction set the amount of commission which Mr. Marzec was to collect for you. Now, isn't that just exactly the true story here?

A. I think it is definitely wrong.

Q. All right. You tell me what it is, then.

A. There was no definite arrangement. No one talked to Marzec. Marzec made the arrangements himself. At least, I have never talked to him and I don't believe the others had.

321 Q. You mean Marzec could go out and make loans here?

A. He brought in applications for loans.

Q. There is no question about that, he brought in applications for loans.

A. Yes, sir.

Q. You mean to say Marzec, say, could approve this loan without you and Brandt and Kusper?

A. No, sir. May I say this?

Q. Yes.

A. If all the loans were made that applications came in for, there wouldn't be enough money to go through.

Q. I assume that. That is probably true, particularly today.

A. May I also add this? There is, in all of these appraisals, in each and everyone of them, a very good appraisal. To justify that, I will add this: That never, there isn't one foreclosure in the Polish Roman Catholic Union on my appraisals, so there wasn't the question of just getting the commission. It was the question of putting in a good word.

322 Q. I understand that. Isn't it a fact that you had a lot of loans and you had a lot of deals, you and Brandt, and you and Kusper, all the time, isn't that true?

A. No, sir.

Q. It is not?

By the Court: Just a minute. We will recess at this time, ladies and gentlemen, until 10:00 o'clock tomorrow morning.

(Thereupon at the hour of 4:30 o'clock p. m., on Wednesday, February 6, 1957, an adjournment was taken in the above-entitled cause to Thursday, February 7, 1957, at the hour of 10:00 o'clock a. m.)

323 Chicago, Illinois,
Thursday, February 7, 1957,
10:00 o'clock a. m.

And thereupon the following further proceedings were had herein:—

By the Clerk: No. 55 CR 679, the case on trial.

324-333 • • •

334 BRUNO L. SOBIERAJ, having been previously duly sworn, resumed the stand and testified further as follows:

Cross Examination by Mr. Struett.

Q. Now, Mr. Sobieraj, before you came down here and testified on behalf of the Government voluntarily, did you discuss your testimony with the United States attorney? Did you discuss your testimony with the United States Attorney at all before that?

A. I discussed it with my attorney.

Q. Who is your attorney?

A. Mr. Klein.

Q. Did you discuss your testimony at all with the United States Attorney?

A. Yes, I did.

Q. Did you discuss it with the revenue agents?

A. Sir?

Q. With the revenue agents, did you discuss it with them?

A. I don't know. There was another man in there, but I don't know who he was.

Q. Now, were you shown the testimony that Mr.
335 Marzec has given the Government?

A. Pardon?

Q. Were you shown the affidavits that Mr. Marzec had furnished the Government years ago?

A. No, sir.

Q. You never saw it?

A. Never have seen it.

Q. Now, you testified, did you not, yesterday, and it was brought out by distinguished counsel here that Mr. Marzec was paying the taxes on this?

A. Correct, sir.

Q. You didn't seriously believe that, did you?

A. Absolutely I did.

Q. You know we have got income taxes?

A. Yes, sir.

Q. Mr. Marzec paid the cash on all these commissions he got, say $30,000.00 of record, forgetting everything else. He paid one point to someone, paid somebody else one point, and paid the taxes, and then he wouldn't have anything left? That is just common sense.

A. All I can answer you is that he withheld money from the cash and said he was going to take care of the income taxes himself.

336 Q. I mean, that just makes common sense, doesn't it?

A. I don't know whether it makes common sense or not.

Q. All right. Now, let me ask you this: Isn't it a fact that you were getting commissions from Mr. Marzec, or let's go back now and take this whole thing. With the 1946 election Mr. Brandt was elected treasurer, isn't that correct; you know that?

A. '46?

Q. Yes.

A. That is too far back for me to recollect that.

Q. If I tell you that, will you assume that is correct?

A. Well, we can check on that, yes.

Q. Yes.

Mr. Marzec had favored his opponent, had he not?

A. Favored who?

Q. His opponent, the other candidate for treasurer.

A. I don't know who Marzec favored.

Q. Isn't it a fact that you and Mr. Marzec were 337 sharing these commissions prior to 1946?

A. I didn't—

Q. On some deals?

A. That I would have to check. I don't remember that far back.

Q. Have you got something available?

A. I have nothing here. We would have to go down.

Q. Isn't it a fact that you were sharing commissions with others?

A. Yes.

Q. About under similar circumstances as you related here yesterday?

A. Correct, sir.

Q. Who were those others?

A. A fellow by the name of Kaczor. That is about the only one.

Q. How about Kusper?

A. I never shared no commission with Kusper.

Q. Did you have any business dealings with Kusper on a building?

A. No, sir.

Q. Were you ever in a building deal where Kusper wanted a cut-in of a quarter?

A. I was never in a deal with Kusper on any type of deal.

338 Q. On a building?

A. On a building or otherwise.

339 Q. Now I will show you Defendant's Exhibit 17 marked for identification. We talked about that yesterday.

A. Yes, sir.

Q. Now, did you have any chance to think that over since last night and the circumstances under which you signed it?

A. No, I didn't.

Q. Now, did you before you signed it—did you say you got a telephone call?

A. No, I believe that was a letter, a form letter to appear at Mr. Wolfe's office for questioning; so I appeared there.

Q. Wait a minute. Have you got that form letter?

A. No, I haven't.

By Mr. Struett: Have you got a copy of it?

By Mr. Manion: No, Mr. Struett, that is a part of the Revenue files, and we don't have it at all.

By Mr. Struett: All right.

By Mr. Struett:

Q. Did you go down there?

340 A. I went down there, yes.

Q. Did you consult with anybody before you went down?

A. No, I did not.

Q. Nobody?

A. Nobody.

Q. No lawyer?

A. No lawyer.

Q. No one else at all?

A. No, sir.

Q. You just went down there on your own?

A. That's right, they asked me to come down, and I went.

Q. And you went there?

A. Yes, sir.

Q. Now, let me ask you this: Isn't it a fact that before you went down there you discussed this matter with Mr. Kusper and Mr. Brandt?

A. No, sir.

Q. And isn't it a fact that all three of you gentlemen received substantially the same letters and you all went down there and signed substantially the same sort of affidavit?

A. I don't know what they signed.

341 By Mr. Manion: I object, your Honor.

By Mr. Struett: Could I have the other affidavits?

By Mr. Manion: No, they are not material here.

By Mr. Struett: I would like to have the other affidavits.

By the Court: Sustained. The witness said they didn't go together. Sustained.

By Mr. Struett: All right.

By Mr. Struett:

Q. Now, have you read your Grand Jury testimony since the time you gave it?

A. The Grand, no, sir.

Q. You have not?

A. No, sir.

Q. Did you discuss your appearance before the Grand Jury with Mr. Kusper and Mr. Brandt?

A. I did not. The only one I discussed it with was with my attorney.

Q. Before you appeared?

A. No, no—before the Grand Jury, yes.

Q. Yes.

A. When I went to the Grand Jury they had called
342 me so I went to an attorney, and I discussed it with him.

Q. Who was your attorney?

A. Mr. Klein.

Q. Before you appeared before the Grand Jury?

A. Correct, sir.

By Mr. Struett: That is March 11, 1955.

By Mr. Struett:

Q. Now, isn't it a fact that prior to the time that you went down and testified before the Grand Jury you had a conversation with Mr. Brandt and Mr. Kusper, and that you all three went down and gave testimony of substantial import as yours?

By Mr. Manion: I object to that, your Honor. It is beyond the knowledge of the witness as to what others would testify before the Grand Jury.

By the Court: I don't understand the question, anyhow. Sustained.

By Mr. Struett:

Q. I will put it to you another way, I will try to put it to you very simply:

Prior to the time you appeared before the Grand Jury did you discuss your testimony of what you were
343 going to testify, or your appearance before the Grand Jury, with Mr. Brandt or Mr. Kusper?

A. I never discussed it with Mr. Kusper, and I have only told Mr. Brandt I got—not before the Grand Jury; before the Grand Jury, nothing. I was thinking of the affidavit, but the Grand Jury, I didn't discuss it with anyone, absolutely no one except my attorney.

344 Q. You didn't have any understanding of any kind or character that you would all three go down there and give testimony of substantially the same import?

A. No, sir.

Q. That you shared in these commissions?

A. No, sir.

Q. You didn't discuss it with anyone?

A. No, sir.

By Mr. Struett: Your Honor, I have got to go through this. I have got it marked somewhere, but I have got to go through it.

What is the date of this testimony?

By Mr. Manion: March 11, 1955.

By Mr. Struett:

Q. Now, on March 11, 1955, was this question asked you and did you make this answer before the Grand Jury. The question was asked you by Mr. Reeb.

You know who Mr. Reeb was?

A. Yes.

Q. The Assistant United States Attorney?

A. Yes.

345 Q. (Reading):

"Q. Have you talked about the testimony you are going to give here today with any of these other gentlemen outside?

"A. No.

"Q. You had a meeting, didn't you, about this?

"A. No. We had no meeting about this at all.

"Q. You had a conversation, didn't you, with Mr. Brandt about it?

"A. Just today and yesterday.

"Q. He talked with you previously about this whole situation?

"A. Oh, he talked about it on several occasions, but nothing. We didn't discuss nothing seriously of what it might be."

Now, were those questions asked you and did you give those answers?

A. Yes, sir.

Q. Now, would you read those first questions, would you read the first one, that one?

346 A. Where did I start? Oh, yes.

"Q. Have you talked about the testimony you are going to give here today with any of these other gentlemen outside?

"A. No."

Q. I suppose that is referring to Mr. Brandt and Mr. Kusper?

A. Yes, sir.

Q. (Reading):

"Q. You had a meeting, didn't you, about this?

"A. No, we had no meeting about this at all."

By Mr. Manion: I object to these questions, your Honor. If Mr. Struett is going to read the questions and answers, I think he should read them in order.

By Mr. Struett: I did.

By Mr. Manion: There is an intervening question that has not been read.

347 By Mr. Struett: Where, which one?

By Mr. Manion: (Reading):

"Have you talked about the testimony you gave here today with any of the gentlemen outside?"

By Mr. Struett: Do you want me to start again and read the whole thing?

By Mr. Manion: Mr. Struett, you know as well as I do that the witnesses were out of the Grand Jury room waiting to testify.

By Mr. Struett: I asked him with reference to the witnesses outside. I understand they were all out there together.

By Mr. Struett:

Q. They were all out there, the three of you?

A. I didn't see Mr. Kusper and I seen Mr. Brandt there and we did not discuss the matter at all.

Q. I see. Do you want any more of this read back to you?

Now, you say here you had a conversation, didn't you, with Mr. Brandt about it, just today and yesterday. Tell us what that conversation was, the substance of it,
348 and the import of it.

A. Well, the conversation was that we were—what do you say, what do you call it? Subpoenaed to the Grand Jury, and they asked me what I was going to say and I said, "I will say what they ask me about." There was nothing else. They never told me what to say, not at all.

Q. Not at all? You didn't ask them what they might be asking you about, did you?

A. Well, I knew what it was going to be.

Q. How did you know what it was going to be, what you were going to be asked?

By Mr. Manion: I object to that, your Honor.

By the Court: Oh, he may answer.

By Mr. Struett:

Q. How did you know what was going to be asked?

A. Because, when I got the subpoena to go in, they told me to bring the books on the Marzec case, all my books.

Q. Did you bring all your books?

A. I did bring them in.

Q. I show you Government's Exhibit 33 marked for identification, a little black book. Did you bring
349 that into the Grand Jury?

A. Yes, sir.

Q. And you made that available to the Government at the time?

A. Yes, sir.

Q. Now, Mr. Sobieraj, beginning in 1946, 1947, this Union had a substantial amount of money available for loan, didn't they?

A. Yes, sir.

Q. And they were interested in getting these loans out to the public; they wanted to get their money out and draw interest on this six million dollars?

A. Correct.

Q. Now, in around there, did you have a conversation with Mr. Marzec in substantial effect that he talked to Mr. Brandt, Mr. Brandt wanted him to go out and see certain brokers and have them make loans through the Union, in substance, did you have that conversation?

A. No, sir.

Q. Did he at that time or on or about that time tell you that Mr. Brandt wanted one per cent?

A. He told me that he is giving Mr. Brandt one 350 per cent but he didn't tell me that Brandt asked for it.

Q. All right. Well, then, you must have had some conversation. Give us your version of the conversation.

A. Well, Mr. Brandt—not Mr. Brandt but Mr. Marzec told me that he is giving Brandt one per cent and I was to get one per cent.

Q. And that is your conversation?

A. Now, if Mr. Brandt got it or didn't get it, I don't know.

Q. Was there any discussion about anyone else sharing in this?

A. No, sir.

Q. Was there anything about Mr. Kusper?

A. Kusper?

Q. Yes.

A. I believe he said that Kusper wanted to be in but

he didn't say anything whether he gave it to him or not.

351 Q. Well, you know Kusper was in on some of these deals, didn't you?

A. I did not know what Kusper was doing. I did not know what deals he was on and what deals he wasn't on.

Q. And you have never known that, is that your position?

A. Today I am told he is.

Q. I mean, you are just told today?

A. No. I mean today. I mean I have heard it since.

Q. Well, since when?

A. Well, since this all started, that Kusper was in on it.

Q. All right. Let me ask you: Isn't it a fact that once this investigation started, say, you had four per cent, Mr. Marzec would keep two per cent, and in turn, turn over two per cent for you and Kusper?

Now, isn't that substantially the situation?

A. That is definitely wrong.

Q. Well, what was the situation?

A. I have never given Kusper that money. I 352 never got any money from Marzec to give to Kusper.

Q. Now, you had a partnership there that you related?

A. Yes, sir.

Q. Between you and—

A. Mrs. Stanczewski.

Q. Your mother-in-law?

A. Yes.

Q. Originally it was your father-in-law and your mother-in-law?

A. I was no partner at that time.

Q. What?

A. When Mr. Stanczewski was alive, that was his business.

Q. And you worked there?

A. I worked there and after Mr. Stanczewski died Mrs. Stanczewski and I were partners.

Q. Isn't it a fact that while some of these commissions were being paid you would have—Mr. Marzec would make out certain checks to Stanczewki, or whatever the name is—I am sorry.

A. To who?

Q. Your mother-in-law's name.

A. Yes, that is the firm, Stanczewski.

Q. And isn't it a fact that on these cash deals
353 you were holding out on your own mother-in-law, on these commissions that you received?

A. No.

Q. Now, isn't it a fact that you told Mr. Marzec on numerous occasions to be careful when be brought that money in so your mother-in-law wasn't around and you didn't want her to see that you got any money.

Isn't that true?

A. I can correct that.

Q. All right, correct it.

A. When he used to come in—first of all, I will have to—our office was right in—the kitchen was right in back of our office. Well, the people would be in the kitchen and they would be talking and I used to say, "Don't talk too loud because we don't want everybody to know about it."

Q. Now, I will ask you this, and I will make it most general to you: Considering your testimony before the Grand Jury as a whole, would you say that it was truthful or it was, in general, not going into details, to
354 avoid the details, one misrepresentation after another and one lie after another?

Now, what would you say, that it was generally truthful or it was generally false?

By Mr. Manion: I will object.

By Mr. Struett: Well, I want to ask him about it. I don't want to take him through the whole thing, your Honor. I have got it here.

By the Court: Let him answer.

By the Witness:

A. It is generally truthful.

By Mr. Struett:

Q. All right.

Can I mark these pages so we have them as we go along?

By Mr. Manion: Yes.

By Mr. Struett: As we go through it, because there are fifty of these questions I have marked, and if we can mark these pages then we can all have them.

By Mr. Manion: All right.

By Mr. Struett: Miss Reporter, will you please
355 mark this page 389, A, B, C, D, E—or just mark it in ink, "1", start here on page 389 and mark it with a small 1, and then 2, and right through.

By Mr. Manion: Why don't you have them marked a defendant's exhibit number?

By Mr. Struett: You can mark this Defendant's Exhibit whatever the next number is, and then mark the pages 1 on through.

(Thereupon said document was marked Defendant's Exhibit 18 for identification, pages 1 through 43.)

356 By Mr. Struett:

Q. Now, I want to ask you this question and you answer it—

By Mr. Struett: I will try to make these general, if

I can, and just ask him generally, to save time. I will do it either way here.

By Mr. Struett:

Q. Was this question asked you:

"Q. You were over there quite a bit. Wasn't it common knowledge that he was the collector,"

referring to Marzec.

"A. I don't think so. It wasn't common knowledge. I never heard of it."

You made that answer to that question, didn't you?

A. I did.

Q. I see. Was this question asked you:

"Did you demand the money or just ask for it?

"A. I wouldnt say it was a demand."

That is on page 18.

"I would merely say it was making a little money
357 there and there was no reason why I couldn't have a part of it."

A. Yes, sir.

Q. You made that answer to that question?

A. Yes.

Q. Now, did Mr. Reeb ask you this question:

"You knew about what he was getting from the owner?

"A. In a roundabout way, just about what he was making, but it wasn't always definite.

"Q. So, you were the appraiser?

"A. Yes.

"Q. And you would know percentagewise what that would be and it would be about four per cent, is that right?"

By Mr. Manion: Your Honor, I object to these questions and answers on the grounds they are not impeaching of anything the witness has said.

By Mr. Struett: Correct. He says basically he doesn't know anything about them now. You have got to take it together.

358 By Mr. Manion: He didn't say that in the record at all.

By the Court: Sustained. Now, it is not impeaching so what is the use of putting it in?

By Mr. Struett:

Q. Now, as I understand your testimony, you never knew that Brandt was going to get any part of this money, is that right? Is it my understanding of this testimony now that then, back in 1946 and 1947, you never knew that Brandt was sharing in these commissions, is that right?

By Mr. Manion: I object to that question.

By the Court: Now, you have asked him what your understanding is, obviously.

By Mr. Struett:

Q. All right: What is your understanding of it? Did Brandt know? Was Brandt getting part of these commissions in 1946 or 1947?

A. I never seen Brandt get any money and I don't know if he got any money.

Q. Did Marzec tell you that he was giving Brandt a percentage?

359 A. He might have said that but I don't know whether he gave him any money, because I have never seen it.

Q. Did Marzec ever tell you that Brandt was getting part of this money?

A. Oh, yes. He said that later on, yes.

Q. All right. Now, I will read you this question and here it is from the secretary of the Grand Jury:

"He took his orders from Brandt."

Now, that refers to Marzec. Mr. Reeb is asking the questions:

"A. Yes."

The secretary of the Grand Jury then asked you:

"Q. Did you ever hear him mention that maybe Mr. Brandt had to get a share of that money?

"A. He never said that to me.

"Q. He never told you anyone was getting a share?

"A. He never said anything to me what was going on."

Were those questions asked you and did you make
360 those answers?

A. If it is there, then I must have made them.

Q. Now, did you ever talk to Mr. Kusper and Mr. Brandt about these commissions?

A. No, sir.

Q. Never, up to this time?

A. Up to this time, no.

Q. Did you know the names of the brokers that were paying these commissions?

A. Well, I knew Miller, Banach. There were some others.

Q. Cutler?

A. I don't know the gentleman.

Q. Schroeder?

A. Schroeder, yes.

Q. It is Mrs. Clyde Cutler. You did not know the gentleman but did you know she was paying commissions?

A. I don't know her at all, never met her.

Q. Isn't it a fact that your record shows you got commissions—well, you may not know that.

By the Court: Did you say Banach or Manach?

By the Witness: Banach.

361 By Mr. Struett:

Q. Milton?

A. Never heard of the gentleman.

362 By Mr. Struett: Now, my cross examination is substantially through and, unless they want to offer any records or substantiating material or summaries of them—I would like to have an opportunity to check them very thoroughly. I may have further cross examination.

By Mr. Manion: Well, your Honor, we intended at this time to offer Government's Exhibit 33 for identification into evidence. If Mr. Struett is going to object to it, I will withdraw my offer.

Do you want us to leave this out?

Mr. Struett: You try your law suit. I am defending this man.

By Mr. Manion: I will offer the exhibit.

By Mr. Struett: I object to it. I haven't had an opportunity to check and cross examine on it. It will take several hours to check. I haven't got my copy here to do it.

363 By Mr. Manion: We will stand on our offer of these exhibits, your Honor, as documents that have been identified by the witness, as part of his books and records that have been prepared in the regular course of his business.

By the Court: I am not sure that he did testify to that. Ask him those questions.

By Mr. Manion: Mr. Sobieraj, by whom were the entries in Government's Exhibit 33 for identification made, if you know?

By the Witness: By Mrs. Stanczewski.

By the Court: He testified to that.

By Mr. Manion: Were they made on or about the dates they bear?

By the Witness: About the same dates, always.

By Mr. Manion: Were the entries in that book made in the regular course of the business of the W. Stanczewski Real Estate?

By the Witness: Yes, sir.

364 By Mr. Manion: Was it in the regular course of your business to keep those records?

By the Witness: Yes.

By Mr. Manion: For what purpose was that record kept, Mr. Sobieraj?

By the Witness: Well, to see who paid and who didn't, receipts, what receipts were generally made.

By Mr. Manion: Were all receipts reported in this book?

By the Witness: Yes, sir, to the best of my knowledge.

By Mr. Manion: Were your checks and disbursements reported in that book as well?

By the Witness: Yes.

By the Court: Under what style does your mother-in-law and you do business?

By the Witness: Just a partnership.

By the Court: Under what style, what name?

By the Witness: W. Stanczewski Company.

365 By the Court: W. Stanczewski?

By the Witness: W. Stanczewski Company.

By the Court: Your father-in-law's name was—

By the Witness: Walter.

By the Court: Walter; and that would have been his name?

By the Witness: Yes.

By the Court: W.

By the Witness: Stanczewski.

By the Court: That was the name under which he did business?

By the Witness: Yes.

By the Court: And you and your mother-in-law continued business under that name, is that it?

By the Witness: Correct, sir.

By the Court: Well, I think the document is admissible under the statutes. It may be received.

(Said document, so offered and received in evidence, was marked Government's Exhibit No. 33.)

366 By Mr. Struett: I object to it, your Honor.

By Mr. Manion: I have only one or two questions on redirect examination, your Honor, of Mr. Sobieraj.

Redirect Examination by Mr. Manion.

Q. Mr. Sobieraj, on cross examination I believe you testified that you did not make any payments to Mr. Kusper.

I direct your attention now to an entry appearing on Government's Exhibit 33 in evidence, as to October 7, 1948.

A. Yes.

Q. And I ask you if you can explain that entry, please.

A. Right here, the writing is that Kusper got—according—shall I say record or writing?

Q Yes, sir.

A. According to the record, Kusper received $275.00.

Q. Now, do you have any independent recollection of making that payment to Mr. Kusper?

367 A. I have not.

Q. You do not have any independent recollection?

A. No, I do not have an independent recollection.

Q. Were these entries made on or about—these entries or payments or disbursements, were they made concurrent or on or about the time that such disbursements were made?

A. About that time, yes.

Q. Now, Mr. Sobieraj, I believe you told Mr. Struett that you had not had conversations with Mr. Brandt relative to the collection of these commissions from Mr. Marzec.

Did you have any conversation with Mr. Brandt relating to the commissions in 1951, in 1950 or 1951, with regard to the disposition of future commissions?

A. That is after the case was—that is, after the indictment already? Or, the case—1950 or 1951? What date was that?

Q. I will withdraw the question and put it this way:

Mr. Sobieraj, do you recall when the Internal Revenue Service first began to investigate Mr. Marzec for income tax purposes?

A. Yes.

368 Q. Now, subsequently to the initiation of a tax investigation of Mr. Marzec, did you and Mr. Brandt have a conversation relating to Mr. Marzec's tax difficulties, relating to the future disposition of commissions to be paid?

A. Mr. Marzec kept the future commissions so he could take care of some additional income tax that he had to pay.

Q. Did you and Mr. Brandt have a conversation?

A. Yes.

Q. About that subject?

A. Yes.

Q. What did you say and what did Mr. Brandt say in that conversation, as best you can remember?

A. Well, we agreed to, and he kept the commissions.

Q. You agreed to what?

A. That Mr. Marzec would keep all commissions.

Q. That was following the time of this conversation?

A. Following that time.

By Mr. Manion: I have no further questions of this witness, your Honor.

By Mr. Struett: Before the witness goes, I want
369 to make a motion to strike the document. I haven't had ample time to cross examine on it.

By the Court: It will be here subject to your examination, throughout the trial.

By Mr. Struett: The witness will be available if I want him?

By the Court: That is up to you. If you want him, you get him.

By Mr. Manion: Pardon me, your Honor. If I may ask one more question of Mr. Sobieraj—

By Mr. Manion:

Q. Mr. Sobieraj, do you recall the date upon which you delivered this document, Government's Exhibit 33 for identification, to me?

A. About two weeks, three weeks ago. I don't know the date.

Q. Approximately three weeks ago?

A. Roughly speaking, about that.

Q. Was it the day before you entered your plea of guilty in this case?

A. That is right.

370 By Mr. Manion: I have no further questions.

By Mr. Struett: I just want to ask him this question:

Recross Examination by Mr. Struett.

Q. Whatever is in that book, that, you say, is in your mother-in-law's handwriting?

A. Yes.

Q. That is information you gave her, is that right?

A. That is right.

Q. I mean, so far as it pertains to these cash receipts?

A. That is right.

By Mr. Struett: That's all.

Redirect Examination by Mr. Manion.

Q. Mr. Sobieraj, would that be true with cash receipts paid to your mother-in-law?

A. Anything that came in the office, it went in, if she collected or I collected.

371 Q. She would make the entries either from her own knowledge or she would consult you first?

A. She would make the entries herself.

Q. She was charged with the duty of making the entries and she would make them either from her own personal knowledge or from information she received from you?

A. That is right.

By Mr. Manion: I have no further questions. Thank you, Mr. Sobieraj.

By the Court: Step down.

(Witness excused.)

SAMUEL J. OSHEROFF, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Manion.

Q. Will you state your full name, please?

A. Samuel J. Osheroff, O-s-h-e-r-o-f-f.

By the Court: Spell your last name again.

By the Witness: O-s-h—

372 By the Court: O-s-h-e-r—

By the Witness: —o-f-f.

By the Court: Samuel J.?

By the Witness: That is right.

By Mr. Manion:

Q. What is your address, Mr. Osheroff?

A. 1723 South Corning Street, Los Angeles 35, California.

Q. What is your profession or occupation, sir?

A. Certified public accountant.

Q. By what state are you certified as a public accountant?

A. Illinois.

Q. Pardon me?

A. Illinois.

Q. Are you in the practice of accounting in California at the present time?

A. Yes, I am.

Q. And with what firm are you connected with in California?

A. Samuel Pop & Company.

Q. Mr. Osheroff, I am going to ask you to try to keep your voice up as much as possible so that the Court and jury can hear your answers plainly.

373 Now, how long have you been employed by this Pop firm in Los Angeles, Mr. Osheroff?

A. About one year.

Q. Prior to that time, where were you employed?

A. Arthur J. Goldberg, certified public accountant here in Chicago, for four years.

Q. When did you first begin your employment for Mr. Goldberg?

A. October of 1951.

Q. Now, prior to your employment by Mr. Goldberg, by whom were you employed?

A. By the Internal Revenue Service.

Q. And how long were you employed by the Internal Revenue Service?

A. Three years.

Q. In what capacity?

A. As an Internal Revenue agent.

374 Q. What were the nature of your duties as an Internal Revenue agent?

A. Well, they were to examine the returns on individual estates, corporations, trusts, partnerships, in order to determine the correct tax liabilities in all cases.

Q. Have you had any formal training in accounting prior to taking a position with the Internal Revenue Service?

A. Yes, I did.

Q. What was your training, sir?

A. I was with several CPA firms here in Chicago.

Q. Were you, at that time, a certified public accountant?

A. I became a certified public accountant just about the time I went with the Government. It was shortly after I got in.

Q. Did you tell me what your title was with the Government?

A. Internal Revenue agent.

Q. Internal Revenue agent?

A. Yes.

Q. Mr. Osheroff, in the course of your employ-
375 ment as an Internal Revenue agent by the Treasury Department, were you, at any time, assigned to investigate and determine the correct tax liability as to a Joseph T. Marzec?

A. Well, I wasn't assigned to it. I requested a return.

Q. How did you happen to request to examine his return?

A. It was in an examination of Henry S. and Mary Banach for the year 1949, which return had been assigned to me, that I discovered that there were certain amounts

of money that had been paid out to a Joseph T. Marzec, and in the questioning of these amounts Mr. Banach and Mrs. Banach also told me that most of the amounts were required to be paid in cash and they had filed a 1099 on the advice of their accountant.

Q. Now, after you were advised by Mr. Banach—or, pardon me.

Let me ask you this: Did his records, did Mr. Banach's records, to any extent, verify the representations made to you by Mr. Banach and Mrs. Banach?

376 A. The fact that a lot of them were made out to cash and on the back of them they had "Paid to Joseph T. Marzec" and they had a description of the properties on which mortgages had been paid and the amount of the mortgage, and a certain percentage was the amount of the check.

Q. Mr. Osheroff, I show you a group of checks, Government's Exhibits 27-A through 27-Z and 27-AA through 27-II in evidence, and ask you if these are some of the checks that you saw and examined at Mr. Banach's office at that time.

A. Well, by the first two I can say that these are the checks I have examined. Do you want me to go through all of them?

Q. Were these checks for 1949 and 1950 or 1949 only, sir?

A. It was—1949 was the year that I was examining, and subsequently I went back and examined 1950.

Q. Now, did you see or find checks among Mr. Banach's—

By the Court: He hasn't finished his answer.

By Mr. Manion: Oh, pardon me.

377 By Mr. Manion:

Q. Are these the checks that you examined at the

time of your first examination of Mr. Banach's office in 1949 and 1950?

A. Yes, these are.

Q. I show you a second group of checks marked Government's Exhibits 27-JJ through 27-ZZ and Government's Exhibits Nos. 27-AAA through 27-OOO and ask you if you subsequently saw and examined those checks at Mr. Banach's office during the year 1950 or 1951?

A. Yes.

I would say these are the checks.

378 By Mr. Manion:

Q. Now, when did you first request to examine the tax returns of Mr. Marzec?

A. It was in September of 1950.

Q. And to whom did you make that request, Mr. Osheroff?

A. To Mr. Joseph T. Marzec. I called him up and made an appointment at his home to examine the books for the years 1948 and 1949.

Q. Did you go to his home?

A. I did.

Q. Subsequent to that phone call?

A. I did.

Q. On or about what date?

A. It was September 26, 1950.

Q. Did you have a conversation with him at that time?

A. I examined the records he had, saw that they agreed with the tax return he filed, and I asked him a few questions regarding what kind of commissions these were and whether he had a safety deposit box.

Q. What did he say to you?

A. As far as the commissions, he said they were
379 real estate commissions, and as far as the safety deposit box he told me he did not have one.

Q. Did Mr. Marzec's records for the year 1949 record the receipt of any real estate commissions by him?

A. Real estate commissions?

Q. Yes.

A. He said they were real estate commissions. Subsequently they turned out to be mortgage commissions.

Q. Did the amount of mortgage commissions or real estate commissions recorded on Mr. Marzec's books and records for the year 1949 correspond with the amount of mortgage commissions or real estate commissions reported on his income tax return for that year?

A. They did. The books agreed with the tax returns he had prepared.

Q. Did he record any deductions or commissions paid by himself to others?

A. He did.

Q. In connection with his 1949 tax returns?

A. He did.

380 Q. Were such deductions and commissions reported or recorded in the books of Mr. Marzec?

A. Yes, they were.

Q. Did they agree with the deductions and commissions as reported in the tax returns?

A. They did.

Q. Now, following this conversation or at the time of this examination, Mr. Osheroff, did you prepare any work sheets or tapes from Mr. Marzec's records?

A. No. I believe I did—well, I took copies, I believe, of his records which were in substantial agreement with what the tax returns were.

Q. How were these records of Mr. Marzec kept?

A. They were kept in—I think just a looseleaf binder, if I am not mistaken, where the pages could be inserted or withdrawn.

Q. Following this examination what did you do if anything further in the course of your examination of Mr. Marzec's tax returns?

A. Subsequent to that time, when I had spoken to Mr. Banach and he had told me about the situation where he had to pay out cash, he told me there were others in
381 the same situation, required to pay cash in order to acquire loans, and he mentioned Harold Shrader and Max Miller, two big ones he said were doing business with Joe Marzec. On examination of the books I did see commissions purportedly received from Max Miller, and for the year 1949 I don't recall the exact amount, but I would say it was probably around twelve thousand dollars.

By Mr. Manion: Will you mark this document Government's Exhibit 35 for identification?

(Thereupon said document was marked Government's Exhibit 35 for identification.)

382 Q. Mr. Osheroff, I will show you a group of exhibits stapled together and marked Government's Exhibit 35 for identification, which purport to be photostatic copies of work sheets, and ask you if you know by whom the originals of those sheets were prepared?

A. They were prepared by myself.

Q. Were they prepared by you in the course of your examination of Mr. Marzec's records?

A. That is correct.

Q. The entries thereon as relating to items reported by Mr. Marzec, were they obtained by you and taken from Mr. Marzec's records?

A. As I pointed out before, the records he had on his books agreed with what he had in his tax returns.

Q. Did you transcribe the records of what was shown as to the individuals by whom payments were made?

A. That's right. These are the ones he had in his books.

Q. Referring to Government's Exhibit 35 for identification, can you tell us what real estate or brokers' commissions reported by Mr. Marzec, if any, were for the 383 calendar year 1949?

A. The exact amount was $13,452.00.

Q. Is that the gross commission?

A. That is gross receipt.

Q. What amount of commissions was reported by Mr. Marzec from Max E. Miller, if any?

A. $10,122.00.

Q. What commissions were reported by Mr. Marzec from William J. Hoppe?

A. $3,330.00.

Q. Now, were any real estate or brokerage commissions reported by Mr. Marzec for the calendar year 1949 from any broker or brokers other than the two I have asked you about?

A. No, there were not.

Q. Were any deductions or expenses shown by Mr. Marzec, or any records of Mr. Marzec for the calendar year 1949 in regard to commissions paid by Mr. Marzec?

A. There were.

Q. What deductions or expenses were shown by Mr. Marzec for that year?

A. Well, I think that would be here.

For the year 1949 he had reported commission ex-
384 penses of $4,350.00.

Q. To whom and in what amount were those commissions paid?

A. For 1949 Bruno Sobieraj received $675.00, according to this; Stanley Kusper the same amount; and William Stanczewski Company, $1500.00; and B. Repsuk, $1500.00.

Q. Now, is this testimony of yours as to receipts and commissions and disbursements of commissions by Mr. Marzec for the year 1949 based upon information obtained by you from the records of Mr. Marzec for that year?

A. That is correct.

Q. Now, were you able at any time to identify the B. Rupsuk, find who that was?

A. Yes, subsequently I discovered that was Kusper spelled backwards.

Q. Now, Mr. Osheroff, did you in the course of your investigation thereafter, conduct real estate brokers of the Roman Catholic Union?

A. Yes, sir, I did.

By Mr. Struett: Your Honor, I don't want to interrupt all the time, but I would like to have it specified. I
385 would like to know when he contacted them and who he contacted.

By Mr. Manion: I will withdraw the last question.
386 By Mr. Manion:

Q. Mr. Osheroff, will you tell us what you did in the course of your investigation, whom you saw and what investigation you made after you examined Mr. Marzec's records for the year 1949 and the year 1948 in September of 1950?

By Mr. Struett: And the time.

By Mr. Manion:

Q. And fix the time as best you can as to your subsequent acts in the course of the investigation.

A. Subsequent to the first meeting with Mr. Marzec I started contacting brokers who I was told were doing business with him, and I cannot point out the definite dates of these contacts because it was sometime between September and, I would say, April of the next year. During that six month period I spent quite a bit of time on

that job, and sometime during that period I believe I was out at the P. R. C. U. office, and I got a list of mortgages issued, and by looking at the list of mortgages issued and by the finder's fees paid to brokers I was able to find the entire list of brokers doing business with the P. R. C. U.

Q. Did you obtain that information from the 387 P. R. C. U.?

A. I did.

Q. Did you contact the brokers as revealed by the records of the P. R. C. U.?

A. I did, to the best of my ability. Some small ones it was hard to locate, but the majority of them I did contact.

Q. This was based on the records of the P. R. C. U. as to whom the P. R. C. U. had paid the finder's commissions, is that correct?

A. That is correct.

Q. Did you have any further conversation or any conversation with Mr. Marzec relative to his 1949 tax returns or 1950 tax returns from the time of your first meeting with him in September 1950 until April 1951?

A. I don't believe I had anything to do with him during that time, personally, that is.

Q. Directing your attention to the month of April, 1951, were you present at a conversation had with Mr. Marzec?

A. Yes, I was. That was in the special agent's office at 105 West Monroe.

Q. On what date did that conference take place, 388 as best you can remember?

A. I think it was April 12, 1951.

Q. Who was present at that conversation or conference?

A. There was Mr. Marzec; his accountant, Arthur Wilson; Special Agent Donovan Johnson; myself, and

there was another agent with me, but I don't recall his name right now, and there was a stenographer.

Q. Was Mr. Vito Konrad present?

A. That is the name of the other agent.

Q. Now, will you state as best you can recall, using language the various parties used, what was said in the course of that conference, and by whom?

A. Well, the first thing and, I would say, the most important thing, in that conference, was if Mr. Marzec had ever received any moneys from a Henry or Mary Banach, at which point he stated he had never received any money from them. He had received a 1099 from them in February, which Mr. Wilson had sent back to the Banachs with a letter stating his client had never received these moneys. He also had sent a letter to the Government informing them of the fact, as he put it. He did admit to dis-
389 crepancies as reported and as subsequently reported regarding Max Miller, that were paid to him.

Q. Does that exhaust your recollection of this conference?

A. That was the basis of the entire conference right there.

390 Q. Did you or anyone in your presence ask Mr. Marzec if he had received commissions from anyone other than Henry and Mary Banach and Max Miller?

A. Yes, we did, and he said other than those reflected on the return, which were Hoppe, and Waank was another, and he said other than those on the return he had not received any other commission.

Q. Were commissions received from Mr. Waank?

A. He said others.

Q. Mr. Osheroff, did there come a time thereafter at which you examined the tax returns and books and records of Joseph Marzec for the calendar year 1950?

A. That is correct.

Q. Approximately when did that examination take place?

A. That was in September of 1951.

Q. Did you make that examination yourself or in connection with someone else?

A. No, I believe Mr. Wolfe was with me, the special agent.

Q. Who is Mr. Wolfe?

391 A. He is a special agent in the Bureau of Internal Revenue.

Q. At the time of that examination, did you transcribe Mr. Marzec's records so far as they reflected commissions received by him during the calendar year 1950 and so far as they reflected commissions paid, or disbursements made by him during the calendar year 1950?

A. I did.

Q. Are those transcriptions reflected in Government's Exhibit 35 for identification?

A. These are the ones.

Q. Mr. Osheroff, will you tell us what commissions, if any, were reported in Mr. Marzec's records or reflected in his books and records for the calendar year 1950?

A. $37,000.50.

Q. Now, did the records reflected there show from whom and in what amounts that total figure of $37,000.50 in commissions had been received?

A. They were all from Max Miller with the exception of William Hoppe $600.00.

Q. Did the 1950 records for Mr. Joseph Marzec
392 reflect the commissions from any other brokers other than the $600.00 from Mr. Hoppe and the balance you told us about?

A. I have down here "other commissions" $1,000.00.

Q. Were those commissions identified?

A. No, they were not. I believe most of it was insurance. I wouldn't swear to that.

Q. Were the items of insurance identified, Mr. Osheroff?

A. There was insurance of $990.00, and he has another $1,000.00. I don't know what that is.

Q. The total of those commissions as reflected in his books and records for the year 1941 correspond or read with the figures or reports made in his income tax report for that year?

A. So far as the original tax return for that year, yes.

Q. I will show you Government's Exhibit 2 in evidence, and ask you if that is the tax return to which you refer?

A. I don't seem to find it here.

By the Court: How much longer will you take with your direct?

393 By Mr. Manion: Just a very few more minutes, your Honor, with this witness. I am almost finished.

By the Witness:

A. Yes, this is it.

By Mr. Manion:

Q. That is the return?

A. Yes.

Q. I will show you now Government's Exhibit 1 in evidence and ask you if that is the 1949 tax return which you have previously testified, or a photostatic copy thereof, I should say.

A. Yes.

Q. What was your answer?

A. Yes, it is.

Q. Mr. Osheroff, did Mr. Marzec's records for the year 1950 reflect any commissions or expenses paid by Mr. Marzec in connection with the brokerage commission business?

A. Yes, sir, they did.

Q. Were commissions paid by Mr. Marzec, and in what amounts and to whom, reflected by his records?

A. For the year 1950 Bruno Sobieraj, $2,160.00;
394 William Stanczewski Company, $4,410.00; B. Respuk, $4,710.00, making a total of $11,280.00 reportedly paid in commission.

395 Q. Mr. Osheroff, in the course of your examination of either tax return for the year 1949 or 1950, did you ask Mr. Marzec at any time if he had any receipts or disbursements which were not reflected or recorded in his books and records?

A. Yes, we did.

Q. What did he tell you, if anything?

A. At the first meeting, the meeting in 1951, he definitely stated he had no other income than that reflected, except that possible adjustment with Max Miller's commissions, and subsequent to that time there was another meeting, which did not last too long.

Q. When did that occur?

A. That might have taken place in September, 1951.

By Mr. Struett: When did that conversation take place?

By Mr. Manion:

Q. Just a moment. Who was present at that conversation?

A. Which meeting are you talking about?

Q. The second one you told us about.

396 A. The second one was Mr. Wilson, the accountant, with Mr. Marzec; Mr. Marzec; Leonard Wolfe, who is a special agent for the Internal Revenue; and then myself.

Q. Where did that meeting take place?

A. The meeting took place in the special agent's office at 105 West Monroe.

Q. What was said and by whom in the course of that conversation?

A. At that time Mr. Wolfe was conducting most of the examination, and he asked Mr. Marzec if he had received any commissions other than those reported and if he had mentioned any time that he did split them with anybody, and Mr. Marzec said, "I don't care to answer", or words to that effect, and after that was asked a few times Mr. Wolfe turned to Mr. Wilson and said, "Your client is not talking" and Mr. Wilson replied, "He won't tell even me anything", or something to that effect.

By Mr. Manion: I have no further questions, your Honor.

By the Court: Take a short recess, gentlemen.

397 (Thereupon a short recess was taken.)

By Mr. Struett: Have you finished?

By Mr. Manion: Yes, I am through.

Cross Examination by Mr. Struett.

Q. Now, Mr. Osheroff, I want to ask you a few questions.

By the Court: Just a minute. Where is your client?

By Mr. Struett: I beg your pardon, your Honor, he will be right back.

By the Court: All right.

(The defendant entered the court room.)

By the Court: Proceed.

By Mr. Struett: Is everybody here now?

By Mr. Struett:

Q. Now, I understood you to say, and I am interested in dates primarily as we go along here, to fix the events. I will do it as fast as I can, and if I make a misstatement of dates I want you to correct me, because I am only

398 interested in dates, as I have said.

Sometime around 1949 I went over to Mr. Banach's office that is, you went over to Mr. Banach's office, is that correct, or might that have been in early 1950, and examined Mr. Banach's return?

A. I had examined Mr. Banach for a prior year, which had nothing to do with this situation. Now, are you talking about the time when I discovered these amounts which had been paid to Mr. Marzec?

Q. Yes, when was that?

A. As I said, it was shortly before September 26 of 1950.

Q. Before September 26. You discovered that what year?

A. I was examining for 1949.

Q. Of Banach?

A. That is correct.

Q. How much had he paid Marzec in 1949?

A. In excess of $30,000.00.

Q. In excess of $30,000.00. And you saw the checks, the ones exhibited here?

A. Yes, sir.

399 Q. And there wasn't much question in your mind that he had paid Marzec that much money, was there?

A. At that time I was stating merely what he paid me, not as a fact, but what he stated.

Q. That's right, and you had the checks and everything else?

A. That is correct.

Q. Now, in September—I beg your pardon. Was it at this time he told you also that there were certain other brokers who in order to get a loan from the P. A. C.—

A. That is P. R. C. U.

Q. —yes, the P. R. C. U., they had had to pay commissions? Is that right?

A. Whether at that conference or another one, I don't recall definitely, but he did say at one meeting there were others in the same situation.

Q. Whether that conference or another one, was it before you went into Marzec's books for the first time?

A. That I don't know.

Q. I see. In September you went over and got Marzec's books and records?

400 A. I didn't get them; I went there.

Q. You went there?

A. Yes.

Q. And you examined them?

A. Yes.

Q. And you have the work sheets which show substantially as you have testified here?

A. Yes, sir.

Q. Then you checked these other brokers, is that correct?

A. That's right.

Q. What other brokers did you check?

A. I checked Max Miller and Mr. Hoppe, and I believe Mr. Shrader.

Q. Any others?

A. At that time I don't believe so.

Q. Now, you got from Max Miller, did you not, a list of the commissions he paid Marzec?

A. That is correct.

Q. And did you get the same thing from Mr. Hoppe?

A. From Mr. Hoppe the checks that he showed me agreed with what Mr. Marzec had reported.

Q. That's right. Did you get one from Mr. Shrader?

A. Mr. Shrader's records, he told me, were non-
401 existent. He merely stated that he had paid commissions to Mr. Marzec.

Q. And you didn't know the amounts?

A. No, I did not.

Q. Now, then, was that about substantially the information you had when you held the conference on April 21—I mean April 12, 1951 with Mr. Marzec?

A. No, I believe I had more information than that.

Q. What else or other information did you have?

A. I think it was before that time I went out to P. R. C. U. regarding their records.

Q. You had the records of P. R. C. U.?

A. P. R. C. U.

Q. P. R. C. U. You also had information, did you not, that he was paying at least some commissions, part of the commission, to Mr. Kusper, both as Mr. Kusper and Mr. Repsuk, didn't you?

A. As reflected in his return, yes.

Q. That's right. You had that information?

A. Yes.

Q. You also had the information that he was paying Mr. Sobieraj?

A. That is correct.

402 Q. I will show you now Defendant's Exhibit 15-A marked for identification and ask you what it is.

A. This is a copy of the meeting which was held on April 12, 1951.

Q. Now, I notice there that there are—well, there are Revenue agents and there are special agents there, is that correct?

A. That is correct.

Q. Now, the distinction basically was under the then Bureau procedures that if you believed fraud was involved you would call in a special agent, and that is why the special agents were there, is that correct? You had asked for a joint investigation?

A. Where there is a possibility of fraud the examining agent has to speak with his group chief and present

the facts to him, the facts he has, and the group chief will at that time after discussing it decide whether to submit it to the special agents.

Q. When the special agents appear that is the procedure?

A. What procedure do you refer to?

Q. I mean, the procedure as followed, that you
403 had detailed?

A. That's right.

Q. Now, have you read that (handing document to the witness)?

A. I am fairly familiar with it.

Q. Have you read it recently?

A. Yes.

Q. That is substantially what took place at that meeting?

A. That is correct.

404 Q. Now, you were pretty certain, were you not, as of the time of this meeting of April 12, 1951, that Mr. Marzec was lying to you as to the Banachs?

A. I would say I was fairly certain.

Q. Yes. From information you had gathered?

A. That is correct.

Q. The same thing is true as to Max Miller, as to that situation?

A. Well, as far as—

Q. Not as bad, but I mean basically?

A. No, I would say the Max Miller situation may not have been in the same circumstances as the Banachs.

Q. Well, give me the distinction.

A. Max Miller paid him by checks made out to his order, which he endorsed and deposited to his account. The checks that were missing, the differences apparently arose through those checks apparently not paid directly to Mr. Miller, but went to escrow.

Whether it was an oversight, or whether he intentionally did not include them, those checks, I don't know at this point.

405 Q. He said he had these deals only with Banach and Hoppe and the other minor transactions, and you knew he hadn't told you the truth?

A. Let us say we hadn't tried him; we were trying to get information from him.

Q. What information?

A. Whether or not he would admit doing business with Marzec.

Q. What?

A. Whether or not he would admit doing business with Banach, excuse me.

Q. You didn't ask him about Schrader. You knew he was not admitting; why didn't you confront him with the Banach checks at that time? You had them.

A. Was it our duty to present that?

Q. I am asking you.

A. I was not conducting the situation. I was merely there as the examining agent, to investigate the records.

Q. I see. You knew at this conference he was sharing at least part of these commissions, and what they were you were not clear on?

A. That is correct.

406 Q. Why didn't you ask him with whom he was sharing these commissions?

A. At that point he would not admit receiving commissions, so how can you ask him how he shared them?

Q. You can ask him more specifically about the source of that money he paid to Respuk and Kusper and how he paid it and where it came from, and so forth?

A. He was asked, and he said those were commissions paid to them for helping him in deals.

Q. You didn't ask him what deals? Oh, never mind.

Now, you mentioned another conversation you had with Mr. Wilson, Mr. Marzec, and Mr. Leonard Wolfe?

A. That is correct.

Mr. Struett: Have you got a transcript of that?

Mr. Manion: We have a conference memo.

By Mr. Struett: I would like to see it.

By Mr. Manion: No, I do not have the conference
407 memo. I don't believe there was one prepared at that time.

By Mr. Struett:

Q. What is your best recollection of that?

A. I think what I have already stated, that Mr. Marzec was very uncommunicative, and when he was asked any questions, if he did say anything, he would say, "I don't care to answer that", or words to that effect, at which point Mr. Wolfe turned to Mr. Wilson and said, "Your client doesn't seem to want to talk." This is strictly my recollection.

Q. Aren't you supposed to make a conference memorandum, or some other kind of Bureau memorandum?

A. No.

Q. Have you got your diary that shows when this thing happened?

A. The date? What do you mean?

Q. The date or the substance of the conversation?

A. No, I don't.

Q. Now, did you have any other conversations with Mr. Marzec at any time other than as related? I
408 will give them to you again, my recollection.

First, when you went out for the books; then you had a conference—

A. April 12th.

Q. April 21st?

A. I believe it is April 12th.

Q. Then you had a conference on what—what is the other date?

A. September 28, 1951.

Q. How do you know it happened September 28, 1951?

A. Because I made a memo of the time we had the meeting.

Q. Have you got that memo?

A. No, I don't.

Q. Where is it?

A. It is in the papers somewhere.

Q. Those are the only three conferences you ever had with Mr. Marzec? You have covered them substantially?

A. Yes, sir, the basic ones.

Q. Did you ever have a conference with Mr. Wilson?

A. Yes, sir, I did.

409 Q. Outside of Mr. Marzec's presence?

A. That is correct.

Q. What did Mr. Wilson tell you? Place the date and so on and so forth.

A. He called me several times complaining about the fact his client would not tell him anything, or certain things at certain times, that apparently his client was trying to get information, or he was trying to get information of what information we had. The first time he called me was a day after I went out to check Mr. Marzec's records.

Q. That is September 20th?

A. September 26th of 1950, and then he called me on the 27th, the following day.

Q. Have you got a memorandum of that?

A. Yes, sir, I do. It is in our files.

Q. Then you got a call from Mr. Wilson two days after?

A. The following day.

Q. I beg your pardon. In 1950?

A. That is correct.

Q. Okay.

A. And at that time he told me he had been called by Mr. Marzec to represent him in this income tax
410 matter which had come up. When I was out with Mr. Marzec the day before, I had never discussed anything about any possible tax deficiency, or whether there were any possible tax deficiencies that might arise.

Q. I think I understand you correctly.

You went out there, and all you did was ask for his books.

A. That is correct.

Q. The next day you had a telephone conversation from Wilson?

A. That is correct.

Q. He told you you couldn't get any information?

A. No, not at that time. *At that time he told me he* had been called upon to represent Mr. Marzec in his income tax matter.

Q. Did he say who called upon him to represent Marzec?

A. He said Mr. Marzec had called him to represent Marzec in this matter.

Q. So, as I get this picture, and I want to get it right, from the day you were out there, which was the first or initial start of this whole investigation, you got a
411 call from Mr. Wilson, the gentleman who was here yesterday?

A. Yes.

Q. To the effect he was representing Marzec?

A. Yes, sir.

Q. You are positive of that?

A. I am as positive of that as I can be.

Q. You have got the Bureau files with sufficient data that you can substantiate your story?

A. That is correct.

Q. All right. Now, how many conferences would you say—oh, let's make it very short. How many conferences would you say you had with Mr. Wilson about this thing?

A. After this first conversation outside of over the telephone, he spoke to me, I would say, about two different times, and when we were examining for 1950 we were out at his office, that is, Mr. Wolfe and myself.

412 Q. Did you have a memorandum of what happened at his office at that time?

A. No, just an examination of his records.

Q. You don't have that?

A. No.

Q. What did he tell you?

A. At that time he told us his clients wouldn't tell him anything, and if he could withdraw gracefully from this case he would. That is basically what he said.

Q. You were there with Brother Wolfe?

A. Yes, that is correct.

Q. Did you ever know a lawyer by the name of Tyrrell Richardson?

A. Yes, I have met him.

Q. When did you first meet him in connection with this matter? Oh, let's make it general; when did you first meet him?

A. I think at one time he was called by Mr. Marzec to represent him. I may have had one meeting in his office.

Q. Do you have any diary to fix those dates?

A. No, I don't.

Q. You talked to Tyrrell Richardson only once 413 or twice?

A. It may have been twice. I don't have a diary of this matter, and I don't have the records of what transpired with Mr. Richardson.

Q. You don't recall what was said about it then?

A. No, not—

Q. Except that he wouldn't cooperate?

A. Not as to Richardson. The only one I remember hearing that from was from Mr. Wilson.

Q. Well, did you talk about the weather or talk about the Cubs or what did you talk about?

By Mr. Manion: I object, your Honor.

By Mr. Struett:

Q. Just basically. Did you tell him you had any information against this chap?

A. I did not tell Mr. Richardson anything about this case, and Mr. Richardson said, I think, at the time that he was going to represent Mr. Marzec along with Mr. Wilson, and at that point I told him he wouldn't get anywhere dealing with me, because it was more or less out of my hands.

Q. Let me ask you something, Mr. Osheroff. How long did you know Max Miller?

A. I met Max Miller when I came in to examine
414 his records in this matter.

Q. That was the first time you met him?

A. That is correct.

415 Q. How often did you talk to him?

A. Well, whenever we required additional information regarding checks. We went in there on the '49 and I also went in there on the '50 later on to get his checks on the details.

Q. Now, I want to ask you this: Did you ever authorize Tyrrell Richardson to make a loan on your behalf out of the P. R. C. U.?

A. No, he did not.

Q. He never had any authority to do it at all, did he?

A. No, he did not.

Q. And who made a loan out of there?

A. I did not.

Q. Well, who made it?

A. A loan was placed on a piece of property before I purchased it. It was a matter of seven or eight months. And I saw an advertisement in the paper regarding a piece of property. This was after I had left the Government, and it turned out to be Mr. Miller selling a piece of property. It had a P. R. C. U. mortgage placed upon it in about May, I believe, of 1951.

Q. 1951?

416 A. It was somewhere around that time.

Q. Is that the right date?

By Mr. Manion: I don't know the date of the mortgage loan.

By Mr. Struett: Well, we will supply it later.

By Mr. Manion: Well, supply it right now.

By Mr. Struett: Well, you have got it here. I will get it for you.

By Mr. Struett:

Q. Well, the date of the mortgage, I take it, is 6-12-51?

A. That is correct, somewhere along in that time.

Q. And the mortgage was $28,625.06?

A. How much?

Q. Wait a minute. No. It was thirty-four thousand.

A. That is correct.

Q. Now, when did you buy that property?

A. At the time I bought the property, the deal was closed in January of 1952.

Q. January, 1952?

A. Yes.

417 Q. And you left the Service prior to that time, didn't you?

A. That is correct.

Q. When did you leave the Service?

A. In October, 1951.

Q. And you went to work for Mr. Goldberg?

A. That is correct.

Q. And Mr. Goldberg was Mr. Miller's accountant?

A. I don't believe he was his accountant at that time. He became his accountant subsequently, I believe.

Q. You went right to work on Mr. Miller's records, didn't you?

A. Who said that?

Q. Within a month or so?

A. I did not.

Q. Well, how long?

A. I would say at least six months to eight months after I left the Government.

Q. I see. All right.

By Mr. Struett: I have about fifteen minutes more. I would like—

By the Court: Go ahead until 12:30 and see if you can get through.

418 By Mr. Struett: Well, if your Honor please, I think that's all, but there may be one or two questions. I want to talk to my client over the noon hour. I don't think I will call him back but if he will be here at 2:00 o'clock, it will facilitate things entirely.

By the Court: Do you have anything further?

By Mr. Manion: Just one or two questions.

By Mr. Struett: There are some questions maybe I can cover now.

By Mr. Struett:

Q. Now, let me ask you this: Did you, during the course of your investigation at any time in this case,

attempt, by interrogation, investigation or otherwise, to find out the amount of commissions and the source of them which Sobieraj received, as reflected on these returns; whether there were more or greater amounts? Did you conduct a simultaneous investigation of Mr. Sobieraj?

A. We had Mr. Sobieraj in, the situation being
419 that nobody was telling anything and it was very difficult to find out anything at all except what we did find out and that is, everybody saying that they had paid their commission moneys to Mr. Marzec.

Q. Now, did you take a statement from Mr. Sobieraj at that time?

A. I believe he gave a statement before the special agents.

Q. Does the same apply, generally, to Mr. Kusper?

A. I believe so.

Q. And the same applies to Mr. Brandt?

A. That is correct.

By Mr. Struett: Do you have those statements here?

By Mr. Struett:

Q. Were you there when those statements were taken or are you familiar with them?

A. I am familiar with them.

By Mr. Struett: I think, to save time, Counsel, do you have the statements with you?

By Mr. Manion: You have Mr. Sobieraj's.

By Mr. Struett: Yes.

By Mr. Manion: And you want Mr. Brandt's and
420 Mr. Kusper's?

By Mr. Struett: Yes, please. I want to have them identified.

By Mr. Manion: Your Honor, at this time, we can locate in our files the statement of Mr. Brandt, although the statement of Mr. Kusper seems to have been misplaced. I have no objection to releasing the statements to

Mr. Struett, as such, but I do object to releasing them to him on the grounds that this is not a material issue in this lawsuit. Mr. Struett would appear to be trying Mr. Brandt and Mr. Kusper at the same time we are trying Mr. Marzec.

If he wants to lay a foundation to impeach Mr. Osheroff by this statement, I will be glad to give it to him. At this moment, this is part of the files of the Internal Revenue Department and he has not shown any grounds or reason for our showing that portion of the files to him.

By the Court: What are the grounds?

421 By Mr. Struett: It is a part of our case.

By the Court: For impeaching this witness?

By Mr. Struett: I don't want to impeach this witness. He says he took other statements.

By the Court: Do you object to this, Counsel?

By Mr. Manion: Yes, your Honor.

By Mr. Struett: I want to—

By the Court: Sustained. Do you have anything further?

By Mr. Struett: I have to think it over.

By the Court: Think it over. You have two minutes.

By Mr. Struett: I can't think it over in two minutes. I am sorry.

By the Court: Your cross examination is concluded unless you proceed.

By Mr. Struett: I can't, your Honor.

By the Court: All right. Is there any redirect examination?

By Mr. Manion: Just a question.

422 *Redirect Examination by Mr. Manion.*

Q. Mr. Osheroff, did you negotiate for the purchase of this property which you told Mr. Struett about, from

Mr. Marzec at any time before you left the Internal Revenue Service?

A. I did not. The property was listed for sale in the Chicago Tribune in December, 1951. That was after I left the Government.

Q. You purchased that property from Mr. Miller, is that correct?

A. That is correct. Mr. Miller had placed a mortgage on it six or seven months before that. I bought it subsequent to that time.

Q. You did nothing to negotiate the mortgage?

A. I did nothing in regard to negotiating the mortgage.

By the Court: Do you have anything further?

By Mr. Struett: I haven't had a chance to think the thing out. I haven't anything to say.

By the Court: Step down.

(Witness excused.)

423 By the Court: We will recess at this time until 2:00 o'clock, ladies and gentlemen.

(Thereupon a recess was taken at 12:30 o'clock p.m. until 2:00 o'clock p.m. of the same day.)

424-425 • • •

426 • • • LEONARD B. WOLFE, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Manion.

Q. Will you please state your full name for the record?

A. Leonard B. Wolfe, W-o-l-f-e.

427 Q. What is your address, Mr. Wolfe?

By the Court: Leonard B., did you say?

By the Witness: Yes.

By the Court: W—

By the Witness: —o-l-f-e.

By Mr. Manion:

Q. What is your address, Mr. Wolfe?

A. My residence?

Q. Yes.

A. It is 212 Coolidge Avenue, Barrington, Illinois.

Q. What is your occupation or profession, Mr. Wolfe?

A. I am a special agent employed by the Intelligence Division, Internal Revenue, United States Government.

Q. How long have you been so employed, sir?

A. Oh, approximately twenty years.

Q. Twenty years?

A. Twenty years.

Q. Now, have you been with the Revenue Service prior to your assignment as a special agent?

A. I have.

Q. And what prior position or positions did you
428 hold with the Revenue Service?

A. I may have misunderstood you. Will you repeat that question, sir?

Q. What positions did you hold with the Revenue Service prior to the time you became a special agent?

A. I did not hold any position with the Internal Revenue Department before I became a special agent.

Q. Your entire service with the Government has been as a special agent, is that right?

A. That is right.

429 Q. Now, were you employed as a special agent during the years 1949, 1950, 1951 and subsequently?

A. I was.

Q. In the course of your duties as a special agent, Mr. Wolfe, were you assigned to the investigation of the tax returns of a Joseph T. Marzec, of Chicago, Illinois?

A. I was.

Q. When were you so assigned, Mr. Wolfe?

A. According to my recollection I was assigned either in July or August, 1951.

By Mr. Struett: Just a second. I didn't hear that.

By Mr. Manion:

Q. July or August of 1951, is that correct?

A. Yes.

Q. Now, Mr. Wolfe, will you tell us, please, what was—

The Court: What was the date, July or August, 1951, is that it?

By the Witness: Yes.

By Mr. Manion:

Q. What are the duties of a special agent assigned
430 to the investigation of a tax return in such instances such as Marzec's?

A. Well, the duties of the special agent are to gather, obtain evidence and bind it up in regard to criminal prosecution, and if there is no criminal prosecution to bind it up to prove there are civil damages.

Q. Now, did you conduct a sole investigation or was yours a joint investigation?

A. In this case I conducted a joint investigation.

Q. With whom?

A. With Mr. Osheroff.

Q. And what was Mr. Osheroff's position?

A. Mr. Osheroff was an Internal Revenue agent.

Q. Now, following your assignment to the Marzec case in July or August, 1951, did you have occasion to have any conference or conversations with Mr. Marzec?

A. Yes, I arranged with Mr. Wilson, his accountant, to bring him in for a conference which took place on September 20th of 1951.

Q. Where did that conference take place?

431 A. That took place in the office of the Intelligence

Division at 105 West Monroe Street.

Q. Who was present at that conference?

A. Mr. Osheroff was present, Mr. Marzec was present, and Arthur Wilson, his accountant, was there.

Q. Now, as best as you can—

By Mr. Struett: Who did he say?

By Mr. Manion: Osheroff, Wilson, Marzec and himself.

By Mr. Manion:

Q. As best you can recall, Mr. Wolfe, using the words of the various parties, will you relate to the Court and jury what was said and by whom, in the course of that conversation?

A. Well, I started questioning Mr. Marzec before calling in a stenographer to take the testimony, and I asked him, as I recall, if he had failed to report any income in the line of commissions received from various real estate men, and he said, "I have nothing to say."

I proceeded further and asked him if he got any commissions which he divided with the officers or his su-
432 periors of the Polish Roman Catholic Union, and he said, "I do not wish to say", or "to talk".

So, seeing it was futile to get any conversation from him, I turned to Mr. Wilson and said, "Your client doesn't wish to talk"

So Mr. Wilson said, "He doesn't talk to me. He doesn't wish to talk to me much." So that ended the conference.

433 Q. Now, following this conference, Mr. Wolfe, did you have occasion to request any further conferences with Mr. Marzec?

A. Yes. Sometime later I called Mr. Wilson up and asked him if he could prevail on Mr. Marzec, if he could come into the office again, and, two or three days later, he told me he was not successful, so we did address a letter, I signed and addressed a letter to Mr. Marzec, I think

it was on September 22, 1951, requesting him to come into the office and adjust any matters we had with regard to his income tax return.

By Mr. Manion: Miss Reporter, I will ask you to mark this as Government's Exhibit 36 for identification.

(Thereupon said document was marked Government's Exhibit 36 for identification.)

By Mr. Manion:

Q. Mr. Wolfe, I show you a document marked for identification as Government's Exhibit 36 and ask you if you can identify that document.

A. Yes. That is a copy of the letter which I addressed to Mr. Marzec.

434 Q. Was that copy retained in the files of the Internal Revenue Service,

A. It was.

By Mr. Manion: Will you mark this Government's Exhibit 37 for identification, please?

(Thereupon said document was marked Government's Exhibit 37 for identification.)

By Mr. Manion:

Q. I show you a document marked Government's Exhibit 37 for identification and ask you if you can identify that document.

A. Yes. That is the return receipt by registered mail that came back to our office, acknowledging receipt of this letter addressed to Mr. Marzec.

Q. You are referring to Government's Exhibit 36 for identification, is that it?

A. Yes, I am referring to it.

Q. Were both of these documents retained and did they constitute part of the files of the Internal Revenue Service in this case?

A. They were.

Q. Now, Mr. Wolfe, following this one meeting you

435 had with Mr. Marzec in September of 1951 that you

told us about, did you have any further or additional conferences with Mr. Marzec relating to his tax problems?

A. Not during the years 1951, 1952 and 1953.

Q. You did not have any further conference during that period of time, is that correct?

A. No. I think there was one in the United States Attorney's office in November, 1954, in which Mr. Marzec was present. Mr. Struett had him in there and Mr. Rieger and Mr. Reeb, I believe, were there.

Q. Now, can you fix the date of that conference?

A. I think that was November, the 8th of November, 1954.

Q. Now, you say that conference took place in the office of the United States Attorney, is that correct?

A. Yes.

Q. Do you recall what was said and by whom, in the course of that conference?

A. Oh, my superior in the office requested me to go over and sit in on the conference.

Q. I said, do you recall what was said and by 436 whom, in the course of the conversation?

A. Oh, it is hard to hear you, Mr. Manion. You asked me what was said at that conference?

Q. That is right.

A. Oh. Well, Mr. Marzec was there and Mr. Rieger, and Mr Struett mentioned that I think he had a large book of kept records and he mentioned about an accountant Mr. Marzec would get in order for his business affairs—

By the Court: I can't hear you, sir.

By the Witness:

A. (Continuing) He mentioned the name of an accountant that would get in order the figures that Mr. Marzec had with regard to these commission deals.

I think, as I recall, these books would be at the disposal of the United States Attorney, but they did not give them to us then.

By Mr. Manion:

Q. Now, Mr. Wolfe, in the course of your examination of the 1949 and 1950 tax returns of Joseph Marzec, did you at any time have occasion to examine his books and records during the year 1951?

A. No, not I.

437 Q. You did not?

A. No.

Q. Did you ever participate, with Mr. Osheroff, in examination of his records?

A. No. Mr. Osheroff had done that before he came to me.

438 Q. Had these books and records which were brought forward in 1954 at the United States Attorney's office been made available to you at any time?

A. No, at no time.

Q. Were they made available to you on that date?

A. They were not handed over when I was there. They were kept on their side of the table, as I remember.

By Mr. Manion: I have no further questions of this witness, your Honor.

Cross Examination by Mr. Struett.

Q. Now, Mr. Wolfe, you have been in service a long time, have you not?

A. If you would call twenty years a long time, yes.

Q. Yes.

As you say, a special agent is the party who investigates or conducts investigations of a case to determine criminal prosecution?

439 A. That is correct.

Q. And after the special agent has finished his investigation, prepares his report where he sends it back to the civil division for settlement, or sends it with recommendation for prosecution as to one or more defendants, isn't that correct?

A. Yes, that is correct.

Q. Or that is substantially correct?

A. Yes.

Q. Now, as the course of investigation develops, one thing or another unfolds, does it not?

A. Usually.

Q. You start with a little bit and after you start you have first this one and then the other one, and sometimes when you get through you don't have any left, and sometimes you wind up only with the one you started with, isn't that right, sir?

A. Usually.

Q. Now, you have detailed for our benefit the only conversations you recall having had with Mr. Marzec?

A. You ask me if I have?

440 Q. Yes, you have given us two conversations.

A. Yes.

Q. With Mr. Marzec?

A. Yes.

Q. One was September 20, 1951, and the other was on December 8, 1954?

A. Yes.

Q. I believe you have got the date there?

A. That was not a conference.

Q. That was a conversation we had upstairs, which I am coming to in a minute.

A. Yes.

Q. Those were the only times you had anything to do with Mr. Marzec personally, isn't that correct?

A. Yes, I believe it is.

Q. Now, did you ever have any conversations outside of Mr. Marzec's presence with Mr. Wilson about this case?

A. Mr. Wilson?

Q. Yes.

A. Oh, Mr. Wilson!

Q. The certified public accountant.

A. Yes.

Q. You did?

441 A. Yes.

Q. Have you got the dates? If you could give them to us then give them to us fast.

A. I think I can recall the date. I had a conversation on September 28th.

Q. Of what year?

A. 1951, in his office on the south side in Chicago.

Q. Go ahead and tell us to the best of your recollection what occurred?

A. Well, Osheroff was with me at the time. Mr. Wilson said that he had difficulty getting all the information from Mr. Marzec. He also said he did not know whether anybody in the Polish Roman Catholic Union shared in the collections made by Mr. Marzec. Mr. Wilson said he had just as soon get out of the case.

Q. And that was about the sum and substance of it?

A. Well, he may have said more, but that is what I remember; those are the things that stick in my mind.

Q. And he couldn't get any cooperation from Mr. Marzec?

442 A. He couldn't get much cooperation from Mr. Marzec.

Q. In the second place, he didn't know whether anybody shared in these commissions?

A. That is correct.

Q. In the third place, he would like to get out of the case?

A. Yes.

Q. Now, you pointed out to him, didn't you, that somebody did share in those commissions as shown by Marzec on the returns, didn't you? You pointed that out to him?

A. Oh, no. That was not in the conversation.

Q. What were you after, really, when you were out there?

A. We wanted to get at the basis of it.

Q. You wanted to find out the true facts, didn't you?

A. We wanted to find out, because Mr. Marzec—

Q. Well, you had a pretty good hunch of the real pitch, what it was? You are an old time agent.

A. I don't know exactly what you mean.

443 Q. You had a pretty good idea that Mr. Marzec, sitting out there at a little desk, was not keeping all these commissions?

By Mr. Manion: I object.

By Mr. Struett:

Q. As an experienced agent?

By the Court: He may answer.

By the Witness:

A. Naturally, the thought occurred to me that an employee in an inferior position must have had to share in any money he collected, but we had no definite information on it, and that is what we had to have.

By Mr. Struett:

Q. And Marzec wouldn't tell you anything?

A. That's right.

Q. Now, that is the first conversation you had with Wilson?

A. Yes.

Q. September 28, 1951?

A. Yes, sir.

Q. Now, what is the next one?

A. I think the next one, as I recall, was October 28, 1951, the conversation in our office.

444 Q. Give it to us.

A. Mr. Wilson wanted to come over to the office, and I told him I wanted him to bring Mr. Marzec in, and he said he couldn't do it. He said he wanted to come over and talk setlement of the case, a civil case, he and Tyrrell Richardson.

I said, "You will have to do the talking and we will do the listening. We cannot talk to you on civil settlement of this case."

So he came in the office, and the proposition was made by either one of the men or both of the men, I do not recall exactly, that they would settle for Joe Marzec, that Joe Marzec would settle the full civil damage, the full civil income tax liability as set out by Mr. Osheroff, and within five or six months.

Q. Now, let me ask you this: That was in October 1951, isn't that right?

A. Yes, that's right.

Q. Now, I want you to give me your best recollection. You certainly had the Banach checks by that time, didn't you?

A. Yes.

Q. You had the Sheridan checks, is that right?

445 I will make it shorter: Did you have substantially all of the tax brokers that have been in here and detailed what they paid, at that time?

A. Substantially, yes.

Q. And at that time had there been an RAR prepared? You know, that is a revenue agent's report.

A. No.

Q. But did you have your figures in generalities of approximately what this amount would be?

A. No, I do not think we had a regular report. I think it was just—if we had anything at all, it was just a figure report on the figures given Mr. Osheroff. I didn't have that with me.

Q. In other words, if you talked figures with these gentlemen it was very vague and up in the air?

A. I didn't talk figures with the gentlemen.

Q. You told him you couldn't?

A. I told him we would do the listening.

Q. Had you concluded at that time to clear this case for prosecution?

A. Just about.

Q. When was your next conversation with him?

446 A. With Mr. Wilson?

Q. Yes.

A. That was the last conversation that I recall, unless there was some telephone call. I do not recall any conference with him. That is the last conversation I recall.

Q. In other words, you had September 28th and October—

A. October 31, I think it was.

Q. October 31?

A. Yes.

Q. I have been all over that?

A. Yes.

Q. Then I will not go over it again. Now, did you ever have any conversation with Tyrrell Richardson about it?

A. Tyrrell Richardson was there with Mr. Wilson.

Q. On the first time, the first one or both times?

A. On October 31.

Q. He was there October 31?

A. Yes.

447 Q. Now, let me ask you this:

You have conducted a number of these conferences where they have come in and tried to settle cases, have you not?

A. Well, no.

Q. You have had discussions with lawyers? They cannot just come in and say: We want to pay up, and then walk out? They can't do that?

A. I have never discussed money with them. I have had discussions where they have indicated, but not as these gentlemen made it.

Q. It is not your function as special agent to do it?

A. That's right.

Q. You have no right under the regulations to do that, have you?

A. Well, it is not our purpose.

Q. It is a matter well known to tax practitioners that is true, that when a case goes in there you have got your problems and particular things in mind on a case?

A. Yes.

Q. All right. Now, did you have any particular 448 conversation with Mr. Richardson about this case?

A. Yes, I think I had a very slight conversation, and I cannot place the time of it, but it was in Mr. Max Miller's office when I was over there trying to straighten out some of the evidence. Someone said, and I believe it was Tyrrell Richardson, they were going to try to go up high to settle the case.

Q. Now, that was you and Max Miller and Richardson talking there, is that right?

A. Max Miller was there, yes.

Q. Right. Now, from your experience as an agent, and the facts you had already developed, you knew they would not get anywhere no matter where they went to settle this case?

A. Well,—

Q. You had a pretty good idea?

A. I thought they wouldn't get anywhere, but you never know for a certainty.

Q. They were talking about how they were going to settle it and go up high to settle it?

A. Yes, that's right.

Q. That is substantially right?

449 A. Yes.

Q. Now, you have detailed all your conversations with Richardson?

A. To the best of my recollection.

Q. Al ight. Can you give me those statements—

By Mr. Struett: Can you give me those statements that Marzec gave you that he has referred to in this conversation of December 10th?

By Mr. Manion: He didn't refer to any, did he?

By Mr. Struett: Oh, yes.

(Documents handed to Mr. Struett.)

By Mr. Struett: Mark these two Defendant's Exhibits the next numbers.

(Thereupon said documents were marked Defendant's Exhibits 19 and 20 for identification.)

By Mr. Struett:

Q. Now, I will show you Defendant's Exhibits 19 and 20 marked for identification, and ask you whether or not those are a copy or copies of the documents which furnish the subject of the discussion in the United States

450 Attorney's office on December 8th, I think you placed the date, 1954.

A. I have no recollection of receiving question and answer statements like this. I do not think I personally saw a question and answer statement like this. If it was there, I do not recall it.

Q. Now, just to refresh your recollection, isn't it true that at the time we were over there, Mr. Rieger was there,

I was there, Mr. Marzec was there, Mr. Reeb was there, you were there,— and who else was there? Oh, yes, Konrad was there, and Freiberger was there?

A. Yes.

Q. We were all there together?

A. Yes.

Q. Isn't it a fact that at that time you had Mr. Marzec there, and I had those statements, and this is a copy of them, and I offered them to the agents right then and there?

A. I do not recall that very clearly. You may have offered them to people, some one of the agents and
451 they took them. I do not have a very clear recollection.

Q. Let me refresh your recollection a bit more.
452 Q. Isn't it true that when I offered them either one of the agents said, We don't want those statements; we have got our case against Marzec and we are not interested in anyone else? Isn't that about what happened?

A. I do not recall that.

Q. Don't you remember that?

A. No, I do not.

Q. Then we left in there, and Mr. Reeb took them, isn't that not a fact?

A. I don't recall that.

Q. Well, were you present?

A. Yes, but I do not remember that. It seems to me I have a faint recollection of these papers, but I do not recall receiving them personally or do not recall them at the conference table at that time.

Q. Would you say that now?

A. It seems to me I have seen them somewhere, but I do not recall seeing them at the conference table at that time.

By Mr. Struett: Do you have the originals? Maybe that will help him.

By Mr. Manion: Do we have the originals?

453 By Mr. Struett: You have got the sworn copies, haven't you?

By Mr. Rieger: They had the original transcripts.

By Mr. Manion: This is what we have. They are not stamped.

(Documents handed to Mr. Struett.)

By Mr. Struett: They are not stamped, no date.

By Mr. Struett:

Q. These will not help you, will they?

A. No.

Q. Not one bit?

A. No.

Q. You also made mention that we had a lot of documents there, and papers and accounting work, and said our accounting—said our accountant would be available, that he had gone over those figures, and so forth and so on; do you remember that?

A. I remember that.

Q. You do remember that, do you?

A. That's right.

454 Q. Now, to help your recollection a little bit, in February of 1955 you were present at a conference in Mr. Tieken's office, at which Mr. Rieger was present and Mr. Arnold Kabaker, Mr. Joseph Tobin, Assistant United States Attorney, Mr. Lunsford who is head of the—

A. Intelligence.

Q. Special Intelligence; Mr. Freiberger, who is special agent or group chief, and yourself. You were all there, weren't you?

A. I don't recall being present when Mr. Lunsford was there and another person you mentioned.

I do recall being present when Mr. Kabaker was there and Mr. Rieger and Mr. Struett.

Q. Not Mr. Struett.

A. That is right. I will take it back. It was Mr. Rieger and the other Assistant United States Attorney.

Q. Reeb?

A. No; prior to Mr. Reeb.

Q. Joe Tobin?

A. Joe Tobin, I remember that.

Q. All right, tell us about that conversation.

455 By Mr. Manion: I object to that line of questioning at this time as going beyond the scope of the direct examination of the case. It seems to me Mr. Struett is now taking us into an entirely different field. If he wants to advance the defense along that line he is free to call these men in as his own witnesses in his own behalf in his own case in chief. I don't think this is the proper time to go into that line of interrogation.

By the Court: I don't remember anything about that in the direct.

By Mr. Struett: He testified about a conference he had in the United States Attorney's office on November 8th or December 8th.

By the Court: What year?

By Mr. Manion: 1954.

By Mr. Struett: 1954.

By the Court: No.

By Mr. Struett: I beg to differ with you. What date did he say?

456 By Mr. Manion: He testified about 1954, Mr. Struett.

By Mr. Struett: That is December 8, 1954?

By Mr. Manion: You are asking him now about 1955.

By Mr. Struett: All right. Now I asked him whether or not at that conference—

By the Court: Well, now, which one? Let us know which one it is.

By Mr. Struett:

Q. Is it November 8th or December 8th?

A. November.

Q. November 8th.

By the Court: What year?

By Mr. Struett: 1954.

By the Court: Well, you were asking about 1955.

By Mr. Struett: That is right, which is about three months later.

By Mr. Manion: That is what I am objecting to.

By the Court: That is the reason there was an 457 objection, and that is the reason it is sustained.

By Mr. Struett: If your Honor please, I would like to make an offer of proof on this thing.

By the Court: Step into the juryroom, ladies and gentlemen.

458 (Thereupon the following further proceedings were had in open court, outside the presence and hearing of the jury:)

By Mr. Struett: I offer to prove by this witness—

By the Court: Now, just wait a minute. Why do you suppose I sent that jury out?

By Mr. Struett: I beg your pardon.

By the Court: Proceed.

By Mr. Struett: I offer to prove by this witness that subsequent to November 8, 1954 there was a meeting in the office of the United States Attorney, Robert Tieken, which was attended by Arnold Kabaker, Joseph Tobin, Sam Crane. These are special agents. Arnold Kabaker and Sam Crane are special agents. Special agent—Freiberger, isn't it?

By the Witness: That is right.

By Mr. Struett: Mr. Tieken and Mr. Wolfe. And, in addition thereto, there was present Mr. Rieger on behalf of the defendant Marzec and the substance of this
459 conversation was that Mr. Rieger advised Mr. Tieken in their presence that he had delivered the two statements, Defendant's Exhibits 19 and 20 to the agents, or the United States Attorney Reeb on the date mentioned, November 8, 1954; that they fully set forth the true picture in this case; that there was additional accounting evidence which would be available to them and that the agents were reluctant to proceed with the investigation other than as against the defendant Marzec, since Marzec alone had been recommended for prosecution;

That it was the general consensus of that meeting and particularly so from the standpoint of the Revenue people, that they should proceed only against Mr. Marzec; that there were affidavits in the files by the other defendants, Kusper, Brandt and Sobieraj to the effect that they had not received any commissions and if they were called to testify or anything, that they would take the Fifth
460 Amendment, and that during the course of that conversation, or as a part thereof, Mr. Tieken—oh, yes, and that the agents advised Mr. Tieken that they would not conduct any further investigation in this case without the authority of the Commissioner of Internal Revenue.

Now, that is my offer of proof from this witness.

By the Court: Any objection?

By Mr. Manion: Your Honor, we would object to the offer of proof at this time as being beyond the scope of the direct examination of this witness and not proper in the cross examination, or in the Government's case as such. Further, we object—

By the Court: What was the latest conversation that this witness testified about?

By Mr. Manion: December or November of 1954, your Honor.

By the Court: That was subsequent, something that transpired in 1955?

461 By Mr. Manion: Subsequent, something that transpired in 1955.

By the Court: Objection sustained.

Bring in the jury.

(Thereupon the following further proceedings were had in open court, in the presence and hearing of the jury:)

By the Court: Proceed.

By Mr. Struett:

Q. Now, Mr. Wolfe—

By the Court: Just a minute. There is a juror missing here.

Here she is. All right, proceed.

462 By Mr. Struett:

Q. I show you Defendant's Exhibit 17 for identification, and ask you whether or not you ever saw that before?

A. Yes, sir, I have.

Q. Where?

A. In the office of the Intelligence Unit, in my file attached to the report which I wrote.

Q. And what is it?

A. It is an affidavit by Bruno Sobieraj. Wait a minute.

Q. What is the date?

A. It is dated October 16, 1951.

Q. I want you to tell us the circumstances under which you procured that affidavit?

By Mr. Manion: I will object to that on the same grounds as the prior question, your Honor.

By the Court: Sustained.

By Mr. Struett: If your Honor please, this man has made an investigation and—

By the Court: Sustained. Proceed to another question if you want to put one.

463 By Mr. Struett:

Q. Now, did you, on or about the date that you obtained this affidavit, obtain other affidavits from Mr. Brandt and Mr. Kusper?

By Mr. Manion: Objection.

By the Court: Sustained.

By Mr. Struett: I want to make an offer of proof on that.

By the Court: Step into the juryroom, ladies and gentlemen.

(Thereupon the following further proceedings were had and taken, outside the presence and hearing of the jury.)

By the Court: Proceed.

By Mr. Struett: I offer to prove by this witness that as part of his investigation in this case, he obtained this affidavit from Bruno L. Sobieraj, which has been marked Defendant's Exhibit 17, and that on or about the same time he also obtained similar affidavits from Frank A. Brandt and Stanley Kusper, of substantially the same

464 purport and effect.

By Mr. Manion: We object to the offer of proof on the grounds that it is not proper cross examination of the witness.

By the Court: Sustained.

Bring in the jury. Have you any other like matters, before we bring the jury in?

By Mr. Struett: I don't know, your Honor. I am not well. I am doing the best I can here and you are just pushing me and I am so nervous I don't know where I am going.

By the Court: Calm down now. We are trying a lawsuit.

By Mr. Struett: I know we are. I am representing a client and I am not well. I asked for a few minutes this morning and you wouldn't give them to me, and I am doing the best I can.

By the Court: I asked you if you had any like matters.

By Mr. Struett: I don't know; your Honor, I am
465 trying to do the best I can.

By the Court: All right, bring in the jury.

(Thereupon the following further proceedings were had and taken, in the presence and hearing of the jury:)

By Mr. Struett:

Q. Now, I show you a letter—

By Mr. Struett: Mark this Defendant's Exhibit No. 21.

(Thereupon said document was marked Defendant's Exhibit 21 for identification.)

By Mr. Struett:

Q. (Continuing) —dated September 16, 1954, and ask you what it is, and what it is about, and if it refreshes your recollection.

A. Well, this is a receipt attorney Rieger gave me for a number of cancelled checks which I was requested to deliver to him at his office.

Q. Now, those were checks which you had obtained from Mr. Marzec during the course of this investiga-
466 tion, isn't that correct?

A. No. I did not obtain it.

Q. Well, Agent Osheroff did?

A. Agent Osheroff did.

Q. That is right. Now, who requested you to return those checks to Mr. Rieger?

By Mr. Manion: I am objecting again, your Honor.

By the Court: Sustained.

By Mr. Struett:

Q. Did you have any conversation with me about those checks before you returned them?

By Mr. Manion: I object to that.

By the Court: Sustained.

By Mr. Struett: Very well.

By Mr. Struett:

Q. Did you have any conversation with Mr. Rieger about the return of those checks before you returned them?

By Mr. Manion: I object.

By the Court: Sustained.

By Mr. Struett: I have another offer of proof to make here, your Honor. I am sorry.

467 By the Court: I asked you about that.

By Mr. Struett: I appreciate it.

By the Court: I asked you just four minutes ago if you had any further matters of that kind.

By Mr. Struett: I will make it later on, if it is satisfactory to the Court and the witness will be here. He is around here, anyhow. So, we won't take out the jury. I just want to reserve the right to make it. It will be very short. Will it be all right?

By the Court: You go ahead with your examination. Any matters that you want to present, now, that have to be presented outside of the presence of the jury, I want you to collect them. I don't want to spend the whole afternoon having these people walk back and forth.

By Mr. Struett: That is all.

By the Court: Any redirect examination?

By Mr. Manion: I have no further questions of 468 this witness.

By the Court: Step down.

469-485 • • •

486 KENNETH N. WORCESTER, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Manion.

Q. Will you state your full name, please?

A. Kenneth N. Worcester.

Q. Will you spell the last name for the record?

A. Worcester, W-o-r-c-e-s-t-e-r.

487 Q. What is your address, Mr. Worcester?

A. 2105 West 175th Street, Homewood, Illinois.

Q. What is your occupation or profession?

A. Special agent, Internal Revenue Service, United States Treasury.

Q. How long have you been employed as a special agent of the Internal Revenue Service, United States Treasury, sir?

A. Approximately eight and one-half years.

Q. Now, prior to that time were you associated with the Internal Revenue Service?

A. I was.

Q. Appointed as a special agent?

A. I was.

Q. In what capacity?

A. Internal Revenue agent.

Q. How long were you employed as an Internal Revenue agent?

A. Approximately two years.

Q. Does that constitute your entire experience with the Internal Revenue?

A. With Internal Revenue, yes, sir.

488 Q. Mr. Worcester, have you been present in the court room throughout the course of this trial?

A. I have.

Q. Were you assigned by your superiors to assist the United States attorneys in the preparation of this trial of Joseph T. Marzec?

A. I was.

Q. Have you heard the evidence as it has been introduced from the witness stand by the various witnesses in the course of the trial on behalf of the Government?

A. I have.

Q. Have you seen and examined the exhibits introduced in evidence on behalf of the Government during the course of this trial?

A. Yes.

Q. Did you prepare summaries or work sheets on the basis of the evidence offered and received in evidence on behalf of the United States?

A. I have.

Q. I will show you a group document marked Government's Exhibit 38 for identification, and ask you if you can identify this document?

A. I do.

489 Q. What are those documents, Mr. Worcester?

A. This is the evidence that I have heard while I was in the court room of alleged income paid to Mr. Marzec.

Q. Now, are the entries in those documents based entirely on evidence you have heard in the court room?

A. It is.

Q. And documents offered in evidence?

A. It is.

Q. Now, did you prepare or cause to be prepared any summaries of the alleged income received by the Defendant Marzec?

A. I have.

Q. On the basis of your work schedules and information assembled in Government's Exhibit 38 for identification?

A. I have.

Q. I will show you two documents marked Government's Exhibits 38-A for identification and Government's Exhibit 38-B for identification, and ask you if you can tell us briefly what those documents are?

A. These two documents, well, 38-A is a summary
490 of the alleged income prepared from Government's Exhibit 38 with respect to the year 1949. They were typed under my supervision.

Q. What is Government's Exhibit 38-B?

A. 38-B is a typed summary of the alleged income as reflected on Government's Exhibit 38, and it was typed under my supervision.

Q. Mr. Worcester, I will ask you if you have had occasion during the course of the trial or in preparation for this trial to examine the tax return of Joseph T. Marzec and Florence Marzec for the years 1949 and 1950, marked as Government's Exhibits 1 and 2 in evidence, respectively?

A. Yes, I have.

Q. Now, specifically, did you examine the entries appearing in Government's Exhibits 1 and 2 in evidence with regard to a commission extent or deductions as reported by the taxpayer?

A. I have.

Q. In each of those years?

A. I have.

Q. Did you examine, Mr. Worcester, Government's
491 Exhibit 33 in evidence, being the cash book of the witness Bruno Sobieraj?

A. I have examined it.

Q. Did you prepare a summary of the income received by Bruno Sobieraj, W. Stanczewski & Company, or either of them, from Joseph Marzec, as reflected in

Government's Exhibit 3 for identification, for the years 1949 and 1950?

By Mr. Struett: Your Honor, please, I have got to object to that question, for the reason I stated this morning. I have not had a chance to verify that or cross examine on that, and I will need a chance to check further in our records on what is in that book, which I have not had a chance to do yet.

By the Court: You have had it. You had an opportunity before trial.

By Mr. Struett: I haven't had an opportunity before trial.

By the Court: Objection overruled.

By Mr. Struett: I saw it for the first time when this trial started.

By the Court: Objection overruled.

492 By Mr. Manion:

Q. Have you prepared such summaries, Mr. Worcester?

A. Yes, I have.

Q. I will show you two documents marked Government's Exhibits 33-A and 33-B for identification, and ask you if you can tell us what those documents are.

A. These are typed schedules. Government's Exhibit 33-A shows receipts by Bruno Sobieraj from Joseph Marzec for the year 1949 from the book of Bruno Sobieraj.

Government's Exhibit 33-B is a typed list of the receipts by Bruno Sobieraj from Marzec for the years 1950 per the book of Bruno Sobieraj.

These two schedules were typed under my supervision.

Q. Do these schedules reflect to the best of your knowledge all of the income received by Bruno Sobieraj from Joseph T. Marzec in the calendar years of '49 and 1950?

A. They do.

Q. Let me ask you this, Mr. Worcester: In the preparation of Government's Exhibits 38-A and 38-B which
493 you have identified as the summaries of the purported or the alleged income received by the defendant Joseph Marzec in the form of commissions for the years 1949 and 1950, did you attribute to Joseph Marzec any income on the basis of Government's Exhibit 33-B in evidence, being the cash book of Bruno Sobieraj?

A. Did I what?

Q. Did you attribute any income or alleged income, I should say, to Joseph Marzec on the basis of this record?

A. Any additional income?

Q. Yes, did you attribute any additional income on that basis, the basis of that record?

A. Yes.

Q. What income did you attribute to him?

A. The amounts—

Q. I am asking you now about Mr. Marzec, not Mr. Sobieraj. Did you attribute any income to Mr. Marzec on the basis of this record, in either of these schedules, 38-A for identification or 38-B for identification?

A. Yes, they are in the total commissions. There
494 is no income in this book attributable to Mr. Marzec.

Q. That is what I want to find out. You say there is not any income attributed to Mr. Marzec from this book?

A. That's right, for the years 1949 and—

Q. In other words, you used this book only to establish deductions and expenses?

A. That is correct.

Q. Mr. Worcester, have you been able to determine or verify any deductions or expenses or commissions paid by the defendant Joseph Marzec for the calendar years 1949 and 1950 in the course of your investigation?

A. Yes, I have.

Q. To whom and to what extent, if any, sir?

A. With respect to commissions paid to Bruno Sobieraj, I took his book, made a list of moneys that he received from Mr. Marzec. There were also checks that he received. Some of the receipts by Bruno Sobieraj were in cash, some were in form of checks, and I listed those.

Q. Do those appear in Government's Exhibits 38-A and B for identification?

A. They do.

495 Q. Now, were you able to determine any commissions or deductions for commissions paid by the defendant Joseph Marzec to Frank A. Brandt for the years 1949 to 1950?

A. Yes, I have.

Q. To what extent and in what manner, sir?

A. I went out to see Mr. Frank A. Brandt, talked with him about commissions that he received from Mr. Marzec. He admitted to me that he had received payments from Mr. Marzec. He had no record of the payments that he had received and he attempted to arrive at a figure of what he thought he had received, based on expenditures. He stated that he had received commissions over a period beginning about 1948 through 1952, I believe it was, that the total amount that he had arrived at based on expenditures was between $40,000.00 and $45,000.00. He could not attribute or he could not spread this money to any years. He could not tell from that what he received in any one particular year.

Mr. Marzec stated that he had paid Mr. Frank A. Brandt $17,900.00 in 1949, or I believe that is the amount,

496 and $28,235.00 in 1950. Based on the lack of records of Frank A. Brandt, and not being able to determine an amount to apply for either 1949 or 1950, I gave credit to Mr. Marzec for the amounts that he stated he gave Mr. Frank A. Brandt.

497 Q. Now, Mr. Worcester, did you make efforts to determine whether or not the defendant Joseph Marzec is entitled to deductions for commissions paid to Stanley Kusper in excess of the deduction for commissions paid as stated in the tax returns for the years 1949 and 1950, being Government's Exhibits 1 and 2 in evidence?

A. I examined the books and records of Mr. Kusper for the years 1949 and 1950. His records reflected the checks issued by Mr. Marzec to Mr. Kusper and Mr. Respuk.

I did not find any additional income due Mr. Kusper from Mr. Marzec.

Q. From Mr. Marzec. In other words, you did not find additional deductions unreported or deductions to which Mr. Marzec would be entitled, is that correct?

A. That is correct.

Q. For payments to Mr. Kusper?

A. That is correct.

Q. Is that correct, Mr. Worcester?

A. Yes.

By Mr. Manion: At this time, your Honor, the 498 Government will offer in evidence Exhibits 38-A and 38-B for identification, being summaries prepared by Mr. Worcester from his work sheets, Government's Group Exhibit 28.

Mr. Struett: I object.

By Mr. Manion: I will also offer in evidence Government's Exhibits 33-A and 33-B for identification, which are summaries prepared on the basis of Government's Exhibit 33 for identification.

By Mr. Struett: Well, I assume I can cross examine first.

Cross Examination by Mr. Struett.

Q. Now, let's understand this first. On these exhibits in 1949 and 1950 you show what commissions were paid to Mr. Marzec. In fact, they were all paid to Mr. Marzec, weren't they?

A. They were alleged to have been paid to Mr. Marzec.

Q. Your accounts are the result of your listening to the testimony as you sat here?

499 A. On the basis of what evidence I heard.

Q. You said that you went in and examined books, and that is an investigation, isn't it?

A. For payouts, by Mr. Marzec.

Q. For the year 1949, Mr. Marzec had $64,900.00 of income or commissions he received. Let's take it first for 1949.

There was $64,900.00 of commissions that he received?

A. If that is the figure on there. This is the total commissions of $64,900.00 shown on this schedule. That is the total of the evidence I heard in this court room that was allegedly paid to Mr. Marzec.

Q. There isn't much doubt it was paid to him, is there?

A. According to the evidence.

Q. That's right. Now, the second line is $2,175.00 to Stanley T. Kusper.

A. Yes, sir.

Q. There isn't any doubt he got $2,175, is there?

A. No, sir.

500 Q. There isn't any doubt in your mind he got a lot more, is there?

By Mr. Manion: I object to that, your Honor.

By the Court: He may answer.

By the Witness:

A. Based on my investigation, I could find no more money, whether he did or did not, I cannot say. He said

he did not, his records do not show the receipt of any more money.

By Mr. Struett:

Q. His records would not show receipt of any more money, would they?

By Mr. Manion: I object.

By the Court: Sustained.

By Mr. Struett:

Q. I mean, if it was cash it wouldn't show on there, would it? Now, you have an affidavit in your file that Mr. Kusper got cash, haven't you, in the course of your investigation and that he was paid in cash?

By Mr. Manion: I object to that.

By the Court: Sustained. He testified to what he
501 heard here in open court and as to the records he looked at.

By Mr. Struett: I have got a right to show what their file shows here, whether they have got evidence.

By the Court: Objection sustained. Stay within the direct.

502 By Mr. Struett: I have got a right to show what their file shows here, whether they have got evidence.

By the Court: Objection sustained. Stay within the direct.

By Mr. Struett: I will have to make another offer of proof then.

By the Court: You just get on with the case until we come to the end of the day, and then we can make all the offers of proof.

By Mr. Struett: I am not in any shape to go ahead that way. I am sorry, your Honor. I just object to the whole thing. I will go ahead and do it to the best of my ability then.

By the Court: Is there any cross examination?

By Mr. Struett: I have got some, but—well, they have got affidavits, and I don't want to say it in front of the jury, and what is the use of it?

By the Court: Is there any further cross examination?

503 By Mr. Struett: I can't, until I have made my offer of proof, and until I have made my position clear in this matter.

By the Court: I understand your position, and now I want you to go ahead with your cross examination. I will let you make your offer of proof at the end of the day. That is not very far away; that is just 37 minutes.

By Mr. Struett:

Q. Well, do you have any evidence in your files, in your Government files, that Mr. Kusper got paid any cash? Yes or no.

A. No, not that I can remember.

Q. You have an affidavit from Dorothy E. Sipiora, who is his secretary, in your files?

A. Yes, I do have an affidavit from Miss Sipiora.

Q. Then look at it.

(Addressing Mr. Manion): Let him see it.

By Mr. Manion: Do you want to see the affidavit, Mr. Worcester?

By the Witness: I would like to see it.

By Mr. Manion: All right.

504 (Document handed to the witness.)

By the Witness:

A. Oh, I recall. I don't see anything in here saying that he was paid cash.

By Mr. Struett:

Q. Now, you had a statement from this same lady in your files, did you not, dated December 29, 1954?

By Mr. Struett: Mark this the next defendant's number.

(Thereupon said document was marked Defendant's Exhibit 22 for identification.)

By Mr. Struett:

Q. You have read this, have you not?

A. Well, could I see that, please?

Q. That is her statement in full or in more detail.

A. I saw this statement in the office of the U. S. Attorney.

Q. Have you got a statement in your file from August Mroz—is that his name?

By Mr. Manion: M-r-o-z.

By Mr. Struett:

Q. Do you have a statement from him in your files?

505 A. Yes, he was interviewed.

Q. Did he say that Kusper got any cash commissions?

A. Not cash.

Q. What did he say?

A. Check. He said he got money.

Q. Did you ask him whether he got any money in cash?

A. I asked him whether he knew that Kusper received any cash, and he said he did not see any cash.

By Mr. Struett: Have you got the statement there?

By Mr. Manion: He has no written statement. Mr. Worcester and I talked to Mr. Mroz together.

By Mr. Struett:

Q. The Grand Jury found he got some of this cash, didn't they, when you presented this?

By Mr. Manion: I object.

By the Court: Sustained.

By Mr. Struett:

Q. You have got Mr. Marzec's testimony that he paid Kusper part of cash, but you are still disallowing it

506 because Kusper denies it. Is that the idea of this thing?

A. I considered Mr. Mroz' statement.

Q. As I gather this story, you found that just about correct on Brandt, didn't you?

A. I wouldn't say that.

507 Q. Well, you got about the same figures and yet you are disallowing half of it because Sobieraj has made available to you the right book on his own statement? You are accepting Sobieraj's statement against Marzec's, isn't that right?

A. That is the only money I can find going to Sobieraj from Mr. Marzec.

Q. In other words, that is the only amount of money that Sobieraj would admit to you that he received, is that right?

A. That is the only amount that my investigation disclosed that Mr. Sobieraj received.

Q. And you would not give Mr. Marzec credit for this thing unless these other gentlemen admitted it, is that right?

A. I considered the amount he said he paid to these other gentlemen.

Q. Of course you recognize, don't you, that all these gentlemen denied originally that they received anything?

By the Court: You are arguing now.

By Mr. Manion: I object.

By the Court: Yes.

508 By Mr. Struett:

Q. Isn't it a fact that all these gentlemen denied ever having received any of this money?

By Mr. Manion: I object to that, your Honor.

By the Court: Sustained.

By Mr. Struett:

Q. Now, you say you gave credit or consideration to Mr. Marzec. Mr. Marzec had some records there for you, didn't he?

A. He submitted a list that it was stated was prepared after all the transactions had been made, stating what he claims that he paid to these other people.

Q. That is not right, is it, sir?

A. Sir?

By Mr. Manion: I think that is it.

By Mr. Struett: I am just asking him.

By Mr. Struett:

Q. I would like to see that, where he says that is true. I don't know that is true. I am sorry.

You say it is true and I say it is not. Let's get the
509 transcript.

(Addressing Mr. Manion.)

You show me where he said that.

By the Witness: Who?

By Mr. Struett:

Q. Show me where the list of statements made up after the transaction appears. Is that what you say?

A. He presented columnar sheets listing the description of the property, the amount of monies received by him, and the amount of money paid out to all these different people, and it was represented—that schedule was given to me and it was either made up after the transaction had occurred, or they thought that the schedule had been made up after the transactions had occurred.

Q. I think you and I are talking about two different things. This document (handing document to the witness) was submitted to you later, which was a summary. This is what you are talking about?

By Mr. Manion: Will you mark that for identification?

510 By Mr. Struett: Is this the same thing? Mark it the next number, and mark this one, too.

(Thereupon said documents were marked Defendant's Exhibits 23 and 24 for identification.)

By Mr. Struett:

Q. Is this the only list you took into consideration?

A. 1949-50. With respect to amounts, it is.

Q. You disregarded any other proof in the case because this was made up afterwards, is that right?

A. This is the only evidence I had from Mr. Marzec where he said or where he alleged that he paid out monies to these other two gentlemen.

Q. This is the only evidence you had?

A. Of amounts.

Q. These are the only figures, summary figures, you had of amounts, is it?

By Mr. Manion: I object to that as argumentative.

By the Court: Sustained.

By Mr. Manion: Going back and forth over the same thing.

511 By Mr. Struett:

Q. You had other evivdence Mr. Marzec had paid out to these men, but you had the amounts in your possession, didn't you?

A. Those are the only things I can think of other than what—

Q. You had some original work sheets where he kept his original records showing how he distributed it. You had in addition to that a long statement where he discussed this detailed arrangement, didn't you?

By Mr. Manion: I object.

By Mr. Struett: Well—

By Mr. Struett:

Q. You had available in addition to that what the situation was and the checks that were shown, and what was done after 1951, and how they carried this thing into effect, didn't you?

By Mr. Manion: I object.

By the Court: Sustained. If you will get back to the direct, it might be desirable. Confine yourself to that.

By Mr. Struett: I would like a recess, your Honor.

512 By the Court: No, we will go on until four-thirty.

By Mr. Struett: I don't know what I want to ask this man now. I want to check these things over. I don't know what to ask.

By the Court: Conclude your cross examination.

By Mr. Struett: I don't know anything right now to ask. I would like to have a chance to go over these things and a little opportunity to do so.

By the Court: How much time would you want?

By Mr. Struett: I would like to have until tomorrow morning and then have them put on their evidence. I have just got to have some rest. I am sorry.

By the Court: Would you be ready at ten o'clock tomorrow?

By Mr. Struett: I would like to have them proceed as to their other witness and then Monday I would like to proceed with my defense.

513 By the Court: No.

By Mr. Struett: I am not going to be rushed continuously. I just can't take it any more.

By the Court: Step into the jury room, ladies and gentlemen.

By Mr. Struett: I just can't take it.

(The following proceedings were had and taken out of the presence and hearing of the jury.)

By the Court: How much more cross examination have you got of this witness?

By Mr. Struett: Judge, I don't think I have got any more. I don't know. I will let them finish tomorrow. Just give me a little more time.

By the Court: Are you through with this witness?

By Mr. Struett: I don't know.

By the Court: Tell me. Try it like a law suit.

By Mr. Struett: I am trying to try it like a law suit.

514 By the Court: Oh, my goodness.

By Mr. Struett: Oh, my God, I can't.

By the Court: Don't talk that way. I said "goodness".

By Mr. Struett: All right, I beg your pardon. Let this fellow go. I will stay here and let them put on Ruggaber tonight and then I will be ready Monday morning.

515 By the Court: No, we are going to finish this lawsuit, this evidence.

By Mr. Struett: But I can't take it any more, Judge. I am not able to.

By the Court: Yes, you can go on.

By Mr. Struett: I have to have an opportunity to talk to my client. I am not able to.

By the Court: Oh, yes, you are able.

By Mr. Struett: When I represent a client—I mean when I am not in a condition—

By the Court: Have you any more cross examination?

By Mr. Struett: I don't know.

By the Court: I am asking you.

By Mr. Struett: What do you want me to do? I will do anything within reason.

By the Court: I want you to finish your cross examination of this witness. Do you want me to dismiss him? I am asking you, do you want to ask him any more questions?

By Mr. Struett: I don't know. I have got a client here to represent. I have been pushed and pushed here

516 as long as I can take it, ever since Monday. I can't take it any more.

By the Court: Oh, you haven't worked one-half as hard as I have seen you work.

By Mr. Struett: Well, you saw me work when I was a lot younger.

By the Court: Do you want to ask this man any more questions?

By Mr. Struett: I don't know. I am honest with you.

By the Court: Have you any redirect?

By Mr. Manion: No, your Honor.

By the Court: Bring in the jury.

(Thereupon the following further proceedings were had in open court, in the presence and hearing of the jury:)

By Mr. Struett: If your Honor please, I make a motion to strike all the evidence.

By the Court: To what?

By Mr. Struett: To strike it.

By the Court: To strike what?

By Mr. Struett: His evidence.

517 By the Court: Motion denied. Have you any further cross examination of this witness?

By Mr. Struett: I don't know, your Honor.

By the Court: If you have any ask your questions now.

By Mr. Struett: I am not able to do it, your Honor. I am sorry.

By the Court: Is there any redirect?

By Mr. Manion: No, your Honor.

By the Court: You may step down.

(Witness excused.)

By Mr. Manion: We have an offer pending of Government's Exhibits 33-A and 33-B and 38-A and B for identification, being summaries prepared by this witness.

By the Court: Is there any objection?

By Mr. Struett: I object to them all.

By the Court: What is your objection?

By Mr. Struett: I don't think they have been properly identified. I haven't had a chance to see some of them. I don't know what is in part of them. I would
518 like to check my records. I think my examination here has been limited. I need support, and I need a reasonable amount of time.

By the Court: I can't hear you.

By Mr. Struett: I object to it.

By the Court: Why?

By Mr. Struett: I have given it to you as best I can. I am sorry.

By the Court: The objection is overruled. They may be received. Proceed.

(Said documents, so offered and received in evidence, were marked respectively Government's Exhibits 33-A and 33-B and 38-A and 38-B.)

519-536 • • •

537 Chicago, Illinois,
Monday, February 11, 1957,
10:00 o'clock a. m.

By the Clerk: No. 55 CR 679, the case on trial.

(Thereupon the following proceedings were had out of the presence and hearing of the jury:)

By Mr. Struett: If your Honor please, I have here a motion for a directed verdict. I move for a directed verdict, and I also have a motion here to declare a mis-
538 trial. I got it to your Honor just as soon as I could. I would like to be heard on it a few minutes.

By the Court: Go ahead. Which motion are you arguing first?

By Mr. Struett: They are all in combination.

By the Court: What are they?

By Mr. Struett: Motion for directed verdict, a motion to withdraw a juror and declare a mistrial, and a motion for a continuance—

By the Court: You are going to argue them all together?

By Mr. Struett: That is right.

By the Court: Go ahead.

By Mr. Struett: Now, if your Honor please, I want to show you this book here and your Honor can see it.

By the Court: All right, pass it up.

(Counsel handed a document to the Court.)

By Mr. Manion: That is Government's Exhibit 33?

539 By Mr. Struett: That is right. Your Honor recalls the testimony of Mr. Sobieraj. He said that was, "our book," there was a partnership book between he and his mother and in there were reported all the commissions he got.

By the Court: Yes, I think that is about right.

540 By Mr. Struett: Now, they have marked by those brass things, where those things appear—If I can step over I will show you.

By the Court: I see them.

By Mr. Struett: I will show your Honor.

By the Court: I see the brass.

By Mr. Struett: You can look at every one in there but one and they are identical in character.

By the Court: Yes.

By Mr. Struett: It is in her handwriting admittedly. She shows the commissions from Marzec, then she shows the split of those commissions between Sobieraj and herself.

Then in the right hand column she carries over only one-half.

By the Court: Well, take January 8, '49.

By Mr. Struett: The same identical situation.

By the Court: That is the first one, March.

By Mr. Struett: We are talking only about the 541 commissions, now.

By the Court: Well, what on that page do you refer to particularly?

By Mr. Struett: The one that is marked there. If I can come over there, I can show your Honor as they go along. I am sorry.

By the Court: Hold it up in front of me.

By Mr. Struett: The first one here, your Honor, on January 8th:

(Reading):

"Loan commission, Hollywood and Winthrop, one-half, L.S. two fifty.

"Grenshaw and St. Louis, Marzec, one-half, $125.00 to B. S." That is Bruno Sobieraj.

542 Then a half to L. S. That is her. Then she carries over the $150.00 in the previous one. She has up here, "Bruno Sobieraj, two hundred fifty," and her half two hundred fifty.

By the Court: Now, let me look at that.

By Mr. Struett: See that right in here (indicating)? In other words, she picks up half in both of these entries. It is all the way through except in one exception.

By the Court: Well, it shows, "Loan commission, Hollywood and Winthrop. Kaczor, one-half." What do you say follows?

By Mr. Struett: B. S., that is Bruno Sobieraj. Then one-half to L. S., then she just carries the one-half over to the righthand column. That is her receipt of that hundred twenty-five dollars.

Now, if it was a partnership book or if it was "our book," I mean, your Honor, you know bookkeeping; she carried the two hundred fifty over, the total commission she received.

543 Now, what it actually is is what commissions he gave her or her share of it. It isn't his book at all.

By the Court: What is her name?

By Mr. Struett: L. S.

By Mr. Manion: Mrs. Stanczewski.

By Mr. Struett: L. S., yes.

By the Court: Well, the testimony is that it was their partnership account book.

By Mr. Struett: Well, it shows on its face it cannot be.

By the Court: Well, I do not know that it does.

By Mr. Struett: Well, I mean, your Honor can see that.

By the Court: I can see what is here, and that is all I can see here.

By Mr. Struett: If it was their partnership book, Judge—

By the Court: I am against you on that. She said it was their partnership book. I am very clear on that.

By Mr. Struett: Now, I set forth here also as to 544 Kusper. Your Honor takes judicial notice of the indictment in this case. The indictment charges here that Kusper got part of these cash commissions.

There has been much evidence here of circumstantial evidence that he did participate in these commissions. In addition to that, the statement of the United States Attorney that Mr. Marzec had furnished direct evidence.

Now, they come in here and say Kusper got none of these cash commissions. As I supposed to try Mr. Kusper or am I supposed to try Mr. Marzec? Am I supposed to defend the charges in the indictment against Mr. Kusper? That is the position they put me in.

We have given them all this evidence. Kusper got all these commissions. We have given them all the circumstantial evidence. They come in and say we went out and examined their books and found none. Does that put the

burden on me to show he got these commissions? I do not know. I am very honest with you.

545 By the Court: What is your point?

By Mr. Struett: I do not think we should be compelled to go ahead in this case.

546 Now, as far as I am concerned, I never had this book. The first time I examined this book was yesterday. I think, your Honor, that with this case closed with this book in here without proper cross examination, I think my motion to withdraw a juror is sound. I can only give it to your Honor.

By the Court: When did this book come into the hands of the District Attorney?

By Mr. Manion: On approximately the 12th of January. It was the day before Mr. Sobieraj entered a plea of guilty, your Honor. Now, in reply to what Mr. Struett is saying at this time, in the course of this trial on Tuesday or Wednesday of last week after the close of the afternoon session I advised Mr. Struett and Mr. Rieger and Mr. Marzec, who were all at the counsel table, at that time that they inquired of me what the Government intended to do with regard to giving the defendant Marzec credit for income received by the defendants Brandt

547 and Sobieraj who had pleaded guilty.

As the Court knows, the Government in a case of this nature is not required at all to give the defendants credit for any unreported deductions, but under the theories of the Bender and Horstein cases we can rely on such deductions and expenses as appear in the return.

However, we advised counsel and the defendant Marzec at that time that we believed that in the nature of the entire case in justice we should give him such credit for unreported deductions as we could establish, and we told them then we intended to introduce the records of the Government's Exhibit 33 and we told them then that

it would substantially record the receipt of approximately forty per cent of the commissions which the defendant Marzec had previously contended he had paid to the defendant Sobieraj.

We told them we were not able to confirm or deny
548 through Mr. Brandt the amounts received by Mr. Brandt for any total tax year because the total amounts submitted to us by Mr. Brandt were in excess of the amounts claimed by Marzec for either tax year, we had given arbitrarily credit for the full tax claim by Marzec, however we told them as to Kusper we had not been able to find any records to verify the claims of the defendant Marzec. The records of the defendant Kusper and defendant Marzec were substantially the same.

Defendant Kusper still denies receipt of any other funds, that we would still stand on the income tax returns as to the receipt of those moneys.

We have not misled Mr. Struett or Mr. Marzec at any time as to what we had planned to do here. We went further than what the law obligates us to go in giving them credit for this. This record was not clearly introduced, and the agent so stated on the stand, for the purpose of any additional income of the defendant Mar-
549 zec; rather, we are taking income out of his hands by offering evidence of unreported deductions to which he had been entitled to his income tax computations.

550 By Mr. Struett: I'm sorry. I don't agree with you. If your Honor please, I want to call your attention to one more matter.

I am not well. I can hardly stand up this morning. I have got a heart block; I have got my ulcer that came back on me yesterday afternoon. I have had pain all the time.

If your Honor wants to go ahead, I will go ahead to the best of my ability.

By the Court: I think we should go ahead.

When you take a retainer you take an obligation to your client, and you take an obligation to your Court, and you take an obligation to society.

By Mr. Struett: I understand that, your Honor. I have not had adequate time and have done the best I could to prepare this.

By the Court: I have held that you have had adequate time to prepare this case and I am still of that opinion.

By Mr. Struett: I am not prepared. I will do the 551 best I can, your Honor.

By the Court: If you are not prepared, it is your own fault.

By Mr. Struett: Presuming it is, your Honor, my client should not suffer under that.

By the Court: I cannot exercise good judgment for you. I can give him a fair trial and that is what I am trying to do. I want you to go ahead and give him a fair trial.

By Mr. Struett: I will go ahead and do the best I can. If I need some time, if I am not well, I will call it to your Honor's attention.

By the Court: You have been talking about time ever since this case started, or shortly thereafter, and I want you to go ahead and try this case; perform your duty not only to your client, but to the Court and society.

Bring in the jury.

By Mr. Struett: May I have a ruling on these motions, if your Honor please?

By the Court: Motions are denied.

552-575 • • •

576 JOSEPH T. MARZEC, the Defendant herein, called as a witness in his own behalf, having been first duly sworn, was examined and testified as follows, to-wit:

Direct Examination by Mr. Struett.

Q. Will you state your name, please?
A. Joseph T. Marzec.
Q. And you are the defendant in this case?
A. I am.
Q. Where do you live, Mr. Marzec?
A. 4182 West Barry, Chicago.
Q. How long have you lived there?
A. Oh, more or less about fourteen years.
Q. Are you married?
A. I am.
Q. Do you have a family?
A. Yes, I have.
Q. Family of what?
A. Family of four children.
Q. Who are they; what are their ages and names?
A. The oldest, Tom, 17; the younger, Joseph, Jr., 16; Robert, 12; and Susie, 5 years of age.
Q. What education did you have, Mr. Marzec?
577 A. Well, I went to grammer school. I went out to seventh grade.
Q. What grammar school did you attend?
A. Sacred Heart, south side.
Q. Then what did you do?
A. Then I had a commercial course.
Q. How did you take that commercial course?
A. It was a private school, small school, I studied accounting—not accounting, but bookkeeping, shorthand and typing.

Q. Then what did you do?

A. Then I went to work at the age of fifteen.

Q. Did you—where did you go to work at?

A. At a manufacturing—that is, an office downtown here.

Q. What kind of work did you do there?

A. Bookkeeping. Originally it was filing and billing clerk and then bookkeeping.

Q. Then what did you do?

A. Oh, from there, in between, I studied further bookkeeping and accounting at Northwestern as a special student.

Q. Then you went to work, did you not, for the Polish Roman Catholic Union?

578 A. Yes, I started there in 1937.

Q. Now you have heard the testimony of Mr. Kobylinski.

A. Yes, I did.

Q. You heard him detail your activities over at the Polish Roman Catholic Union?

A. Yes, I did.

Q. And his testimony was substantially correct, was it?

A. Correct.

Q. That is right?

A. Right.

Q. We need not go into that any further.

Now, you also heard, did you not, the evidence here that you obtained a real estate broker's license?

A. That is right.

Q. I believe—that was in what year?

A. Oh, I think it was about 1945 or somewhere in there.

Q. Now, between the obtaining of that broker's license and the latter part of 1946, did you in your own behalf solicit through brokers or solicit brokers to make

579 loans at the Polish Roman—at the Union, I will say?

A. No, I didn't solicit at the Union.

Q. How did you go about it?

A. Well, I had some friends that I got acquainted with in the office, that is before the convention in 1946; and at that time before 1946 there, I think, I made one or two loans, something like that.

Q. And you got a commission on those, didn't you?

A. No, I got it from the brokers, that is right.

Q. About how much, if you remember?

A. Oh, it was very, very nominal; it was practically nothing.

Q. What did you do with that commission; did you split it with anybody?

A. At that time?

Q. Yes.

A. Yes, Sobieraj, myself and a few directors.

Q. I see. Now in 1946 was there an election in the Union?

A. That is right, in the Fall.

Q. And Mr. Brandt was elected the treasurer?

580 A. That is correct.

Q. And you were in favor of another slate?

A. That is correct.

Q. Subsequent to the time Mr. Brandt was elected treasurer, shortly thereafter, did you have any conversation with him relative to these loans and commissions?

A. Yes, I did.

Q. About when, that you can place the time to the best of your ability?

A. This happened after the convention. They called me in one day and he said to me, "Joe" he said, "you have made some loans before?"

Of course I said to him, "Not that I know of."

He said, "Well, I heard you did." He said, "You men-

tioned to me a particular building, that he thought I got commission, and I said, "What is wrong with that,—what is wrong with the loan, anything?"

He said, "Nothing, merely I heard you were getting commissions."

Q. All right. Now, then, did you after that conversation with Mr. Brandt, have a conversation with
581 Mr. Sobieraj?

A. Yes, I did.

Q. Now when you talk of Mr. Sobieraj, you are talking about the Mr. Sobieraj who was on the stand here the other day?

A. That is correct.

Q. And who was the appraiser out at the Union, I mean the appraiser of these properties?

A. That is correct.

Q. All right.

A. And I had a conversation with the appraiser, and at that time he said to me, he said, "Joe," he said, "whatever you do, don't tell him anything, that is, tell Brandt anything because," he said, "you are on the wrong side of the fence."

He said, "He is sore at you; he is going to fire you" so I didn't say anything.

Q. Then what happened?

A. Well, later on he called me again, Brandt, he wanted to know how these things go around here. He said, "Something is going around, I can't put my finger on it."

I told him the same thing, "I don't know anything."
582 I had a conference again—not a conference, I met Sobieraj in the office one day, he is coming in there with an appraisal. I said, "The boss asked me again, wants to know what is what over here."

He said to me, "You had better keep your mouth shut until I straighten it out with him. I will straighten it out myself."

Q. Then what happened?

A. He called me in again the third time.

By the Court: "He", who?

By Mr. Struett: Mr. Brandt.

By the Witness: He called me in again the third time. He said, "You know what is going on over here, Joe. You don't want to talk."

He said, "If it is because of the convention," he said, "forget it, that was politics."

"Now," he said, "that is all over and I want you to tell me what is going on over here."

He said, "I was at the convention, I got elected.
583 The salary isn't what I went after."

He said, "I went out for the extra money."

He said, "I want to make a buck here while I am here."

So I said, "Well, if you put it that way—"

And he said, "There is no hard feeling."

I said, "I'll tell you what it is."

Then I explained him the procedure of that.

584 Q. What did you tell him?

A. I told him, "These brokers come in here and they fill an application in here or they send it in or sometimes I brought them at different locations—submitted into the office."

I said, "It goes in the treasurer's office. When it goes from the treasurer's office for an appraiser, Sobieraj takes care of it, puts enough valuation and makes sure it goes through."

I said, "Then the commission is distributed."

Q. Did you tell them who was sharing in the commission?

A. Well, at that time Mr. Kusper had control over it through a broker by the name of Boksa.

Q. Did you tell that to Mr. Brandt?

A. That is the question involved there, certain loans went there through. He wanted to know who Boksa is. I said, "That is a friend of Kusper but in for that purpose. The loans he made were Miller loans. Naturally Miller's name didn't appear but Boksa's name appeared as broker but they were Miller loans.

Q. Now, did you then have a conversation wi'
585 Mr. Sobieraj about your conversation with Mr. Brandt?

A. Well—

By Mr. Manion: Fix the time and place.

By Mr. Struett: Excuse me.

By Mr. Struett:

Q. When, would you say, to the best of your recollection, these conversations that you have detailed, one, two, three, took place, to the best of your recollection?

A. They took place with Brandt in his office.

Q. About when, Mr. Marzec?

A. Oh, this is right after the convention, right after the convention, immediately after, a few months—within a few months, I would say this was going on.

Q. That would be 1946, September convention, is that right?

A. That would be after the convention, yes.

Q. And the convention was held?

A. September, 1946.

Q. 1946?

A. Yes.

Q. Now, then, did you have a conversation or have
586 you detailed all of your conversation with Mr. Brandt at that time?

A. No. After I told them what the situation was, how these loans went through, he got kind of put out about Sobieraj not telling him of these things that we are getting these commissions. Sobieraj told me he didn't tell him anything and for me not to say nothing either. When I told him that I explained to Brandt what the procedure is, he was kind of put out about it.

Q. I mean you told Mr. Sobieraj that you had explained it to Mr. Brandt, is that correct?

A. That is right, that I explained it to Mr. Brandt, that is right.

Q. Now, did you have a subsequent conversation with Mr. Brandt?

A. Yes, I did. That is when he inquired and he said to me, "Those loans that Boksa got here," he said, "can you find out whose loan they are, whether Kusper had anything to do with it?"

So I went over to Max Miller's office and I told him, I said, "Max," I said, "Brandt wants to know what the deal was on those loans."

So he brought out his checks—cancelled checks 587 made payable to Wiersbicki, and two of them—

Q. Blanche Wiersbicki?

A. That is right. Two of them, he gave them to me. I brought those checks over, gave them to Brandt, and I said, "There is your evidence," and I questioned Miller about it. He said the rest of the commission went to Boksa.

Q. What else did Miller tell you?

A. Then I returned the checks back to Miller.

Q. Did Mr. Miller tell you what Boksa was doing with that commission?

A. Well, he said he is taking care of his own end over there. He said, "All I do is give these to Kusper."

Q. Now, then, did you have a conversation subsequent to these conversations you have related, or was it a part of these conversations, relative to the amount of these commissions that Mr. Brandt wanted from the deal?

A. Well, after we discussed this, he said to me—

By Mr. Manion: Just a moment, Mr. Marzec. I would like the witness to specify to whom he is talking and the time and place.

583 By Mr. Struett: That is right, you should do that if you possibly can, Mr. Marzec, to the best of your ability, you should say whom you were talking to, about when, to the best of your ability, and give what he said and you said, rather than say "We agreed to", and so forth.

By the Witness:

A. Yes. Well, at the third meeting with Brandt, he told me to go over and see these brokers and tell them that hereafter any loan they want, they should talk to you and contact you and that you will handle the loans for them.

589 He said to me, "Any of those loans you handle, I want one per cent."

He says, "I don't care whose loans they are, and it must be in cash."

Q. Now, then, after that conversation did you have a conversation with Mr. Sobieraj about it?

A. Yes, I went to Sobieraj. I told him, I explained to him what happened with Brandt.

So he said to me, "If Brandt is getting one point, I want one point."

He said, "After all," he said, "I am the appraiser. The appraisal is not good without my signature, and they have to have an outside appraiser, and therefore," he said, "I am entitled to it."

Q. Now, then, did you subsequent thereto have a conversation with Mr. Kusper about this matter?

A. Yes, sir, I did. He stopped me there one day in the hall.

Q. When, if you please?

By Mr. Manion: Will you fix the time?

By Mr. Struett:

Q. Was it shortly subsequent to your conversation
590 with Mr. Brandt and Mr. Sobieraj?

A. That is after, after the conversation with Brandt, after a conversation with Sobieraj and then Kusper.

By Mr. Manion: In what year, sir?

By the Witness: Oh, that would be in the early part of 1947.

And he said, "I understand that you are taking over the collections of these mortgages."

I said, "Well, that is correct."

He said, "Don't forget" he said, "I am the attorney here." He says, "If Brandt gets one point, I get one point."

He says, "I am just as important here as he is."

I said, "Well, if there is enough money here," I says, "you will get it."

By Mr. Struett:

Q. Did he tell you where his source of information was—came from, that you were to be the collector, or that you were to take over?

By Mr. Manion: Who is this "he"?

By Mr. Struett: Mr. Kusper.

591 By the Witness:

A. Yes, Mr. Kusper.

I said to him, "Well, where did you get this, how do you know we are having a deal over here?"

He said, "Well," he said, "Mr. Miller told me that he has to submit all those applications to you."

By Mr. Struett:

Q. Now, after all these conversations, let's take the last one you have detailed with Mr. Brandt and Mr. Sobieraj, you went to the brokers, did you not?

A. The brokers?

Q. Yes.

A. That were dealing there; I went there and told them that Mr. Brandt, according to Mr. Brandt I am supposed to collect the commissions and that "if you don't think that is correct," I said "you send in your applications, you will find out they will be rejected."

Q. You told that to all of them?

A. To all of them whoever.

Q. Any of those that have been detailed here?

592 A. Yes, whatever business there was at that time.

Q. Did you tell them anything else besides that you were the man to deal with?

By Mr. Manion: To whom?

By Mr. Struett: These various brokers?

By Mr. Manion: Let's take them one at a time, shall we? I can't cross examine him unless I know who he is talking about.

By Mr. Struett: I mean they all have practically testified to it, why waste a lot of time, your Honor?

By the Court: Now proceed in an orderly manner. Tell the name of the person he is talking with, when and where the conversation took place.

By Mr. Struett:

Q. All right. Now, then did you see Mr. Miller, as he testified to?

A. Yes. I told him what happened.

Q. What did you say to him and what did he say to you, and approximately when was it in relation to time to the best of your ability?

A. It was early year of 1947, I went to his offices. I
593 told Max, I said, "You will have to deal in the future with me because if you don't, you send your applications in there, they will be turned down."

Q. And did you also tell him at that time that a copy of the application was to be sent to your home?

A. Miller very seldom got copies. It was either direct conversation or I had got the addresses of the buildings or it was a call at the house. Sometimes I would get a copy or many other times I would stick the application in his office, deliver it in there myself, and most of them were mailed to the office.

Q. Now, then, did you see any of these other brokers? We have got Miller now out of the way.

A. Yes.

As we progressed, any broker that would come in there who wanted a loan, then I would explain to them this situation.

594 Q. What would you say to them and what would they say to you? Now, take the brokers by name. Let's take Mr. Sheldon.

A. Mr. Sheldon come in a day later than that. He come in later.

Q. Well, who came in next?

A. Well, I think Schrader.

Q. And what did you tell him?

A. I told him the same situation, that in order to get the loan you would have to have enough commission, because there are three individuals, Brandt, Sobieraj and Kusper has to be taken care of, that the commission has to be four per cent or five per cent.

Q. And did Mr. Schrader send the copy of the application to your home?

A. Schrader, before any of these applications would come in, would discuss the building, discuss the amount of

the loan and then he would send the application to the office and notify Sobieraj.

By the way, he knew Sobieraj personally, Mr. Schrader. So he would notify Sobieraj and I would turn in my information to Brandt that this is one of the loans.

595 Q. Now, what other brokers—we have got Miller, Schrader, Scott. Now, what did you tell Mr. Scott?

A. Scott come in by himself to the office. He said, "Well, I would like to do business over here." I think somebody must have said somewhere else that you can get the loan.

So I explained to him the same thing. But he said, "I am working for myself. I am a small man," and that he could not afford to pay more than three per cent only.

So I said to him, "I am supposed to go along providing it is in cash." So that is the deal I had with Scott.

Q. Now, Mr. Milton.

A. Milton did not come into the picture until late in fifty-something.

Q. And what in substance did you tell him?

A. Well, Milton knew I was the man to see there. He found that out from Miller, he told me. When I met him for the first time he said, "You know you are doing business with Miller," and he said, "I would like to get some loans here. I personally did not know Milton. I don't think I heard of him."

596 Well, the very first loan he come in there to get, well, I told him he would have to put up cash before he got the loan, and, evidently his client did not want to take a chance on it either.

So I said to him, "Well, all right, what do you want to do?"

He said, "Well, we will agree if you will give the money to Kusper. Let him be the escrower. Let him hold the money."

597 Q. And that was done, that testimony is in the record?

A. If they have the evidence, the escrow and copies and everything.

Q. And you talked to Kusper about that and told him—

A. Right in his office.

Q. (Continuing)—that was being done. Now, did Mr. Hoppe, what was his situation?

A. Hoppe was in and out before I took over the checks and, in fact, I believe, he still continued, and some applications come in there and so Brandt called me in one day and he said, "Joe, what about this Hoppe, he did not tell me anything about him."

I said, "Mr. Brandt, I do not know Hoppe." I said, "I saw him in this office picking up his papers. Outside of that I do not know."

He said, "Are you sure you do not know him, or are you pulling a fast one?"

I said, "I do not know the man."

So he said to me, "Well, you better go over there and find out."

598 So I went over to Hoppe's office. It was on a Saturday. I sat down and talked to him. I said, "Who are you doing business with?" And Hoppe would not say, so I said, "In the future if you want to get a loan there," I said, "You will have to pay commission to me because I am handling it and Brandt sent me down to let you know."

He said, "Are you sure it is Brandt?"

I said, "Certainly it is Brandt." I said, "If you do not believe me you just try it and see what happens to your application."

So I said, "That is the deal," the deal was that way.

Q. Now, Mr. Sheldon.

A. Mr. Sheldon was the same thing. He understood from somebody—

Q. You had a conversation with him on or about that time, the early part of 1947?

A. That is right. He said to me he heard from some sources that I am the man to see if you want to get loans in there. So we talked everything over, how to provide and what to do with the application, who to send it to, and
599 what the amount of the commission is. I told him it would have to be four per cent minimum in cash.

So he agreed to it in cash, and that is how we did business.

Q. How about Mr. Banach?

A. Banach come in there in 1949, '48, rather, and I think he had a couple deals in '49 and '50. I met Banach in another broker's office then. He found out they were getting loans so he naturally talked to me the same way, that he wanted to get loans there also. So I explained to him what it is.

Of course, he knew the office because he is a member of the organization.

Q. And did you make the loans with Mr. Banach?

A. That is right. I did the same thing.

Q. Now, some of these brokers that you have mentioned, there is Miller, Schraeder, Scott, Milton, Hoppe and Banach. Is that all of them involved here? Miller, Schraeder, Scott, Milton, Hoppe and Banach?

I guess that is all. Some of them would send a copy of their applications for a loan to your home, would they not?

600 A. That is right.

Q. Which ones?

A. Well, I think one of them is Hoppe. He would send me a copy. On that copy he would put down the amount of commission.

Q. Now, the others, they would contact you personally?

A. I think I got some copies from Schraeder. Others would call or I would get the information in the evening at home, or a Saturday at their place of business.

601 Q. Now, did the other persons mentioned, that is, Mr. Brandt, Mr. Kusper and Mr. Sobieraj know about these particular brokers that you were dealing with?

A. Any loan that I handled automatically was a commission loan, and they all knew it and that is the way they handled it.

Q. Now, did you get cash on some of these commissions?

A. That is right.

Q. Now, what brokers—first of all, we will take that brokers paid you by check.

A. Miller paid checks in '49, and half of the time in '49 it was checks payable to cash, and '50 was approximately all checks.

Q. Checks payable directly—

A. To me.

Q. To you?

A. That is right.

Q. So in '49 Mr. Miller paid you checks to yourself?

A. And checks to cash.

Q. Checks to cash, which you cashed?

A. That is right.

602 Q. And had the money?

A. Yes.

Q. Now, any other brokers pay you by check?

A. Hoppe paid by check.

Q. Now, as to these other brokers, how did they pay you?

A. Well, mostly it was cash.

Q. Do you recall any others that paid you in check?

A. No; there were a couple of checks, I think, of Banach's, from Banach, but that is from the beginning there. The rest was always cash.

Q. Now, of the checks you received payable to yourself, what generally did you do with those checks, to the best of your recollection today? Did you put them in your bank account? Did you cash them? Outside of your bank account, or what did you do?

A. Most of these checks were deposited to the account.

Q. To your own personal account?

A. That is right.

Q. Now, as to the checks that Miller gave you payable to cash, what did you do with those checks?

603 A. Most of these were cashed. There might have been some deposited, but there was cash paid from those checks. In other words, I did not issue checks to the treasurer for the appraiser or the attorney, but I paid them in cash because they were cash checks.

Q. Now, you are giving me your best recollection on that, isn't that correct?

A. Right.

Q. Long ago you furnished the Government with your bank statements and everything, else, did you not?

A. That is right.

Q. Now, if you got these commissions in checks did you distribute part of the proceeds of those checks to certain people?

A. Generally, yes, I distributed them in checks.

Q. And what people?

A. Well, Mr. Brandt, the treasurer. The deal was he gets cash at all times. He never would accept anything but cash.

Sobieraj got paid in checks. So did Kusper under the name of Repsuk.

Q. Now, generally the checks where you received
604 these commissions in check you put the checks in your—

A. Account.

Q. (Continuing)—account; and then you drew checks?

A. That is right.

Q. To Mr. Sobieraj for his proportionate share of that commission, is that right?

A. Right.

Q. And in some instances you drew the check payable to him and in other instances you drew it payable to—

A. Stanczewski.

Q. That was a partnership?

A. Supposed to be a partnership.

Q. And who was Mrs. Stanczewski?

A. Mrs. Stanczewski was the mother-in-law.

Q. Of Mr. Sobieraj?

A. That is right; she died in '52.

Q. Early in '52?

A. Early in '52.

Q. Now, prior to the time Mr. Sobieraj became appraiser he worked for Mr. and Mrs.—what is the name?

605 A. He worked for W. Stanczewski, Walter Stanczewski. He was the son-in-law, and he merely was working for him.

Q. And Walter in turn prior to Sobieraj had been an independent appraiser?

A. He was the appraiser, right.

Q. Of the Union?

A. That is right.

Q. Is that right?

A. Well, whatever loans they had.

Q. Whatever loans they had. Now, when you paid Mr. Kusper on loans which you had received by checks, did you pay him by check?

A. Generally, yes, sir.

Q. Were those checks drawn to Mr. Kusper, or how were they drawn?

A. Well, in the beginning I made a couple of checks to Kusper and he objected to it. He said he don't want his name to appear. So he told me to write them out in the future in the name of Repsuk. That is his name spelled backward.

Q. Now, I show you—

By Mr. Struett: Will you mark this, let's see, these Defendant's Exhibits 25, I think it is 25. I think there
606 are nine checks there. Mark it 25-A to 25-I, inclusive.

(Thereupon said documents were marked Defendant's Exhibits 25-A through 25-I, both inclusive, for identification.)

By Mr. Struett:

Q. Now, I show yon Government's Exhibits 25-A to I inclusive. Are those part of the checks that you gave to Mr. Kusper during the year 1950 which were paid out payable to B. Repsuk?

A. Yes, these are a few of the checks that he got.

Q. And Repsuk is Kusper backwards, just as Aksarben is Nebraska; isn't that true?

A. That is right.

607 Q. Now, as to the checks, and to the commissions which you received by checks, you never gave Mr. Brandt any checks on these commissions, did you?

A. Never. He would not accept checks.

Q. And you always gave him cash?

A. Cash—cash; yes.

Q. Cash. Now, in other words, when you got a commission on a building where you got a check and had to pay out—just a moment, please.

(Short interruption.)

Q. You would have to pay Mr. Brandt still in cash on those loans on those commissions?

A. That is right.

Q. And as to the amounts or as to those commissions you received in cash, on which were the proceeds, were received as the proceeds of checks payable to cash, and you had the cash;

How did you distribute those commissions, the cash that you received, either where you were paid a commission in cash or where you cashed a check which was payable to cash, how did you distribute those commissions?

By Mr. Manion: I object to that question. It is
608 far too general, your Honor. We need to know to whom he is distributing, what amounts, what percentages.

By the Court: Yes. You cannot cross examine on it. You cannot contradict it, maybe because it is true, maybe because you cannot identify the people who got the money.

Objection sustained.

By Mr. Struett:

Q. Well, who did you pay the commissions to that you received in cash?

By Mr. Manion: During what period of time?

By Mr. Struett:

Q. During this entire period of time.

By Mr. Manion: That is two years, Mr. Struett. Is that what you are talking about? You have been ahead and behind the tax period.

By Mr. Struett:

Q. Let's make it '49 and '50. Now, who did you deliver that cash to?

609 By Mr. Manion: In what amounts?

By Mr. Struett:

Q. And in what amounts?

A. To Mr. Brandt, it was one per cent at all times, cash. Sobieraj, generally, one and a division where the commission was less than four.

Kusper, the same thing, with the exception of Banach's loans where he got a little less than one, and a division on Scott's loans. I believe the rest were all one point.

Q. In other words, Mr. Marzec, if you have a commission of four per cent, one point of that would go to Mr. Brandt, one point to Mr. Kusper, one point to Mr. Sobieraj, and you would keep the other point?

A. Well, Sobieraj and Kusper were generally one point, but with exceptions depending, that is, if I got four per cent.

Q. I say, if you had four points.

A. On Banach's loans there were variations, because there was in it a full point to Kusper.

Q. Now, is that substantially as it was?

A. That is right.

610 By Mr. Manion: Is what substantially as it was?

By Mr. Struett: The over-all situation. I am going to get specific here with him, detail the buildings before I get through.

By Mr. Manion: I hope you do.

By Mr. Struett:

Q. All right. Now, how did you pay in cash?

A. Brandt, I think I had a piece of paper and put the address of the building and the amount of the loan, and the amount of the commission and put the piece of paper —rolled it around with a rubber band and took it to his office the first opportunity I had to get in without anybody looking.

Q. What would you do with it?

A. Well, I would come there. Sometimes he would take it, but most of the time he would open his drawer. He'd open his drawer and I would drop it in his drawer.

611 Q. Now, how would you pay the cash to Mr. Sobieraj?

A. Sobieraj, what I did with Sobieraj, if it were checks, well, he would say to me—I would say to him, "How do you want it?"

Well, some were Stanczewski and some were Sobieraj, so he would tell me and that way I did it. But before we did anything I had an understanding if his mother-in-law were anywhere around we were not to discuss the cash transactions.

By Mr. Manion: I object to his understanding.

By Mr. Struett:

Q. Well, did you have any conversation with Mr. Sobieraj as to the circumstances under which you were to deliver cash to him, and can you place the dates to the best of your recollection?

A. When I began making loans when Brandt took over I talked to him, and he explained to me, he said, "When you come to my office," he said, "you have checks to pay, it is all right, you ask me; but if it is cash you should be careful what you say because my mother-in-law is in the kitchen and I do not want her to hear you."

612 Q. Now, how did you pay him? Did you pay him in cash, hand it to him?

A. Cash, whatever the loan was, where I got cash. Now, these cash loans he knew which were cash loans and which were not, because, like I said before, he knew most of these brokers.

By Mr. Manion: I object to the witness testifying what somebody else knew.

By the Court: Sustained.

By Mr. Struett:

Q. Well, did you have a conversation with him where you discussed what brokers?

A. That is right.

Q. You did?

By Mr. Manion: When and where and by whom?

By Mr. Struett:

Q. When and where and by whom?

A. When I got a Sheldon loan he knew it was a cash deal, so—

By Mr. Manion: I object again to this line of questioning.

By the Court: Sustained.

By Mr. Struett:

Q. Did you have a conversation with Mr. Sobieraj, 613 one or more conversations where you told him in substance how these brokers were paying these commissions?

By Mr. Manion: I object to that question, telling him anything in substance.

By the Court: Yes. Sustained.

By Mr. Struett: Would you read that last question back to me?

(Thereupon the question was read as above recorded.)

By Mr. Struett:

Q. Where you told him how—leave out the word "substance"—these brokers were paying these commissions to you, whether they were paying them by check or by cash?

By Mr. Manion: I have no objection if Mr. Struett wants to interrogate Mr. Marzec about conversations he had with Mr. Sobieraj regarding certain subjects, but when he asks it, "Did he tell him how," and let the answer stand yes or no on the record, then I am going to object.

Why don't you ask him if he had a conversation about this subject?

614 By Mr. Struett: All right.

By Mr. Struett:

Q. And did you have a conversation with Mr. Sobieraj about the subject of how these brokers were paying these commissions to you? Did you have that conversation?

A. Yes, I did.

Q. And will you state to the best of your recollection when and where it occurred, what brokers were discussed and what you told him?

A. Well, it was not all brokers at one time. At different times he would ask me about this certain broker. He would say, "Miller, what was he paying you?" Well, he would know five per cent check, before, that is what you get.

If I get four per cent cash, check payable to cash by Miller then he wants cash because he knew I got cash, that is a cash check.

Q. Now, did you also discuss with him broker Sheldon?

A. Yes, I did.

Q. What did you say to him and about when did the conversation take place, to the best of your recollection?

615 A. Well, it always took place—these conversations always took place with the first deal with these brokers. The first deal I had with Sheldon then when there is a new customer.

He says, "What is the deal here?" I said, "A cash deal."

He said, "All right, I want my cash in the same amount."

Q. Now, Schrader.

A. Schrader, he knew personally, he knew I was getting it. He knew them before I knew them.

Q. And Scott?

A. Scott, I told him when we had the first deal, I said I knew a new client he. . I said, "The commission he is giving is only three per cent. I cannot give you no one per cent commission."

616 So he said, "What are you going to do?" He said, "You and I split two points and the treasurer gets one."

Q. Now, Milton.

A. Milton, well, that was cash also, checks payable to cash, cashier's checks. Schraeder was also cashier's checks.

Q. Hoppe, Banach?

A. Hoppe would make checks payable to myself.

Q. Banach?

A. Banach was cash deals, and he knew that I told him what I am getting from the first deal, and from there on he wanted the proportions cut.

Q. Now, when you paid off to Mr. Sobieraj and delivered him the cash, did you include with that cash a little white slip showing the building involved? Yes or no?

A. I had to at all times give him the information on what building, what it is for, and whether this was a check or whether this is cash.

Q. Now, you have detailed how you paid out or paid Mr. Kusper by the proceeds of the checks you had of the commissions you received by way of checks. Now, how did you pay Mr. Kusper his share of the commis-
617 sions that you received in cash?

A. When I see cash I had to pay him the same way in cash.

Q. How would you do it?

A. Well, I would go to his office and he would always question me when he saw me, "Any money today?" "Any money today?" I said, "Well, when I get it I will let you know."

And, like Miller, he would contact me when he would come in. He would say, "Any checks? You pay him out anything?" Then I would go to his office.

By Mr. Manion: I object.

By Mr. Struett:

Q. No, no; how did you give him the cash? Did you have it wrapped up with a little slip with the name of the building just like the others?

A. Just like the others. It was wound up with the cash money.

Q. And the address of the building was attached to it?

A. The location of the building and the address.

By Mr. Struett: Would the reporter mark this De-
618 fendant's Exhibit No. 26 for identification?

(Thereupon said document was marked Defendant's Exhibit 26 for identification.)

By Mr. Struett:

Q. Now, I show you Defendant's Exhibit No. 26 marked for identification, dated 9/28/51, and ask you what that is?

A. This is a list of checks showing the date of the check, the number of the check, and who it is payable to, and the amount of the check.

Q. And it is a receipt for checks you delivered to Agent Osheroff?

A. That is correct.

Q. You received it from Agent Osheroff, the agent who testified here the other day?

A. That is correct.

Mr. Struett: Let me have that black book.

By Mr. Struett:

Q. Now, I show you Government's Exhibit No. 33 marked for identification. We examined that book to-
619 gether yesterday and Saturday in part, did we not?

A. That is right.

Q. And it contains—Well, just a minute. Are all the commission checks, are all the checks—strike it out.

Are all the checks which you gave Mr. Sobieraj in payment of his share of the commissions on these loans in that black book?

A. No, they are not.

By Mr. Struett: Will you mark these, please?

(Thereupon said documents were marked Defendant's Exhibits 27 through 31 for identification.)

By Mr. Struett:

Q. I show you Defendant's Exhibits 27 to 31, and ask you to state what they are, if you know? Identifying each one of them and whether or not you find them in this black book.

A. Check made payable to Bruno Sobieraj, dated October 5, '49, check No. 364, $400.00 on building at 1121 East 64th. I could locate this in that book.

620 By Mr. Manion: What is the identification number of that check?

By Mr. Struett:

Q. The identification number you pick up on the back?

A. 27?

Q. Here is what he means. He wants the identification number the Court Reporter put there.

A. 27. Do you want the endorsement too?

Q. How much is the check for?

A. $400.00. The next check is dated June 30th, '50, check No.—I think it is 471 or '77, payable to W. Stanczewski & Company in the amount of $375.00, building 4610 South Ellis. This is Exhibit 28.

Check dated July 8, 1950, No. 484, made payable to Bruno Sobieraj, amount of $700.00, building at St. Lawrence and Anthony, Exhibit 29.

Check dated August 5, 1950, No. 490, payable to Bruno Sobieraj, $660.00, building at 1429 East Marquette. That is Exhibit 30.

Check dated August 12, 1950, No. 495, payable to Bruno Sobieraj in the amount of $450.00, building at 4701 Malden Avenue, Exhibit 31.

621 Q. Now, I show you one check, Defendant's Exhibit No. 27 marked for identification for $400.00. Do you know where that was cashed?

A. Endorsed by Bruno L. Sobieraj. That endorsement was Walter Wsurontek, 1400 Union Avenue, 671 West 14th Street.

Q. And do you know what is there?

A. From the information I have, it is a tavern.

Q. The same applies here to check for $700.00, Defendant's Exhibit No. 29?

A. Bruno L. Sobieraj, 14th and Union Avenue, 671 West 14th Street, Wsurontek, W-s-u-r-o-n-t-e-k, is what it looks like to me.

Q. Here is another check for $660.00, Defendant's Exhibit No. 30, which bears the endorsement of Bruno Sobieraj and Walter Rokusky.

Do you know who Walter Rokusky is?

A. Well, I do not know Walter Rokusky, but—

By Mr. Manion: Will you answer the question?

By Mr. Struett:

Q. You do not know who Rokusky is?

A. I don't.

Q. Now, the partnership—you heard Mr. Sobieraj
622 testify here the other day—was known as Walter Stanczewski & Company, wasn't it?

A. That's right.

Q. Now, I show you Defendant's Exhibit No. 28 marked for identification and the endorsement thereof. It bears a bank endorsement, of course. That was made out to

W. Stanczewski & Company and it bears their endorsement?

A. Yes, at the bottom of the check, Walter Stanczewski & Company.

Q. All right. Now, you have given us the general method of operation here, that is, the receipt of these commissions, the distribution of them as aforesaid, and who received them as you have testified to.

Now, was there any change therein subsequent to 1951?

By Mr. Manion: Object to the materiality of that, your Honor.

By the Court: What is the materiality of it, please?

By Mr. Struett: I propose to show, your Honor, that this man has absolute records, checks, and so forth, 623 that exhibit the method to paying by check and he has got the checks covering the situation.

By the Court: My recollection is that this indictment covers the years '49 and '50, is that correct?

By Mr. Struett: That is correct.

By the Court: Then why should we be inquiring about, what is it, '52? Objection sustained.

By Mr. Struett: I would like to make an offer of proof at the right time on it.

By the Court: All right.

By Mr. Struett: If your Honor please, it is twenty-five minutes after. I want to talk to counsel. I am starting a new phase of this.

By the Court: Would you like to recess?

By Mr. Struett: I would, please.

By the Court: We will recess at this time, ladies and gentlemen, until 2:00 o'clock.

(Whereupon a recess was taken until 2:00 o'clock p.m. of the same day.)

624

• • (Caption—No. 55 CR 679) • •

Chicago, Illinois,
Monday, February 11, 1957,
2:00 o'clock p. m.

Court convened pursuant to recess.

Present:

Mr. Manion

Mr. Struett

And thereupon the following further proceedings were had herein:

By the Clerk: No. 55 CR 679, the case on trial.

(Thereupon the following proceedings were had in open court, outside the hearing and presence of the jury:)

By Mr. Struett: If your Honor please, to facilitate the time here, I would like to make an offer of proof at
625 this time. Then we can get on our merry way.

By the Court: All right.

By Mr. Struett: Mr. Marzec, will you take the stand, please?

JOSEPH T. MARZEC, the defendant herein, called as a witness in his own behalf, having been previously duly sworn and examined, resumed the stand and testified further as follows:

By Mr. Struett: If your Honor please, I want to prove by this witness that in 1951 the arrangement testified to by him as to the sharing of these commissions was changed to a certain extent in that Mr. Kusper did not share in these commissions, and there are other details involved in that.

Then in 1952—

By the Court: Wait a minute. When was the first one?

By Mr. Struett: 1951, if your Honor please. The years of the indictment are 1949 and 1950.

626 By the Court: Yes.

By Mr. Struett: Then in 1952, Mr. Sobieraj came to him after there had been a change in certain offices of the Union, and stated that henceforth he was to have two per cent or two points of the commission; that is, if it was four per cent, he was to be paid half of that, he, Sobieraj; that he, Mr. Marzec, took the matter up with Mr. Brandt and told him what Sobieraj told him, Marzec; that Mr. Brandt then said, "Well, if that is the situation, he will have to have two per cent."

That thereafter under all these billings Mr. Sobieraj received his two points; that is, if it was four per cent, he received two per cent or two points, as Mr. Marzec says.

And that at that time all of these commissions that Marzec received were paid to Mr. Sobieraj by check, and Mr. Marzec has the checks in his pocket, he checked his records. I want to offer those checks.

627 And then I want to offer the further testimony—offer to prove by this witness that as to the balance of the two per cent, of the two points or two per cent, Mr. Marzec reported or picked up for his income tax purposes the other two per cent and then paid Mr. Brandt in cash, paying Mr. Brandt approximately one-third of the two per cent that Mr. Marzec kept.

And I offer that proof by this witness with all the supporting data and detail, his checks and the records, and so forth and so on.

By Mr. Manion: We object to the offer, your Honor, on the grounds that the stated testimony in evidence has no probative value in this case and are not material to the issues of the case.

By the Court: Objection sustained.

By Mr. Struett: Now I have one other offer of proof. Will you give me that receipt, please, for those four Kusper checks?

Now I offer to prove by this witness, and he will so testify, that around September of 19—where are those
628 other exhibits I offered this morning, the photostatic copy?

By way of preliminary to that proof, I want to state this to your Honor:

There is identified a receipt by Mr. Osheroff of certain of these Repsuk and Sobieraj and Stanczewski checks. There are also identified certain of those checks, the checks themselves having been identified.

Part of these checks were returned to Mr. Marzec on June 13, 1952, and the balance of those checks, Government's Exhibit 25-A to, I believe it is, I, which have been identified, still remain in the agents' hands.

That Mr. Marzec communicated with Mr. Miller, he will so testify, told him his attorneys could not get these checks; that Mr. Miller said he would take the matter up with Mr. Wolfe, and that then he called Mr. Marzec, said he had taken the matter up with Mr. Wolfe, that is
629 Special Agent Wolfe, who testified here, and that Special Agent Wolfe would bring them over to Mr. Rieger's office.

I offer that proof.

By Mr. Manion: We will object to the materiality of that, your Honor.

By the Court: What does it prove or tend to prove?

By Mr. Struett: It tends to prove my theory of this case, your Honor.

By the Court: And that is?

By Mr. Struett: This whole situation is entitled to be developed before this jury.

By the Court: Is that all?

By Mr. Struett: Yes.

By the Court: Sustained.

Bring in the jury.

(Thereupon the following further proceedings were had in open court, in the presence and hearing of the jury:)

630 (The following proceedings were had in the presence and hearing of the jury:)

By Mr. Struett:

Q. Mr. Marzec, I show you again Government's Exhibit No. 33, and I will show you Defendant's Exhibits 27, 28, 29, 30 and 31 marked for identification.

You have looked at this book and you have looked at the exhibits, and none of them appear in this book which is Government's Exhibit No. 33, is that right?

A. I couldn't locate them.

Q. You couldn't locate them?

A. No.

Q. And you checked them on the dates that your checks bear, and on or around the date?

A. Yes.

Q. And the various places they have—

A. Clips, yes.

Q. That they have clips?

A. Yes.

By Mr. Struett: Let the record show that the clips
631 indicate the dates where commissions were received from Mr. Marzec.

By the Court: Those clips can be moved. As a matter of fact, I moved one this morning.

By Mr. Struett:

Q. Mr. Marzec, you testified, did you not, that Mr. Miller on certain of these loans paid you five per cent,

that is, five per cent of the face value of the mortgage, is that right?

A. That is correct.

Q. And that five per cent was paid to you by way of checks, is that correct?

A. That is right.

Q. And that is, by checks payable to you?

A. Payable to myself, yes.

Q. And that he paid you four per cent on checks payable to cash, then cashed by you, is that correct?

A. That is correct.

Q. Now, why was that distinction?

A. Well, he heard that Banach was paying me four per cent, so he insisted he is going to do the same thing.

632 So I says, "All right, but it has to be in cash."

So he made these checks payable to cash.

Q. Now you also testified this morning that Mr. Kusper did not receive his one-fourth of these commissions on the Banach loan.

A. That is right.

Q. Was it all the Banach loans?

A. I believe so. In general, they were practically all Banach loans.

Q. Now, why was that?

A. There was a part, or about one-third of that one per cent that was retained to cover expenses of the other officers.

Q. Now, referring specifically to the convention of the Union in September of 1950, that was held approximately what date?

A. Oh, I think it is the third week in September.

Q. On or about that time did Mr. Osheroff who testified here the other day, call you?

A. Yes, he called me.

Q. What did he say and what did you say to the
633 best of your recollection?

A. He called me on the telephone that he would like to make an appointment to see me, and we agreed, I believe, to the date. I took time off from the office and he come to my home and I disclosed my books.

Q. Now, then, subsequent to that date did you have a conversation with Mr. Miller—Mr. Max Miller?

A. Well, this was after the convention, already, and Osheroff has been in, examined my books, and he has been in the office examining the office books.

Q. Well, subsequent to when he came in to examine your books and when he came in to examine the office books, did you have a conversation with Mr. Max Miller?

A. Yes, I did at that time; they were examining I believe, his books over there in his office.

Q. Will you state to the best of your recollection about when it occurred?

A. Well, it was immediately after—it was before the first of 1951 and it might have been in October.

634 Q. It might have been November?

A. It might have been November.

Q. It might have been December, but your best recollection is it was during the last three months of 1950?

A. That is right, sir.

Q. Now, will you state what he said to you and what you said to him?

A. Well, at that time when he was investigating his books there, he said to me that from the information he got from Osheroff, he said that none of it, that is, Brandt or Sobieraj or Kusper, reported the cash received from these commissions.

Q. Was there any further conversation at that time?

A. Well, I went over to see Sobieraj and I questioned him about the commissions he received and the information I have that he didn't report the cash.

And he said to me, "Well, I thought you paid it. You pay the tax on it."

I said to him, "Why?" Since when am I responsible for your income tax?"

So it wasn't but a short time after that that he
635 called me. He said he would like to take me out to dinner.

So we did make the appointment and we went out to dinner and we were with him and he had an agent, a Federal agent from the Bureau, I believe.

Q. You don't know whether he was—

A. I don't know what department or where.

Q. Do you recollect the name of the man today?

A. No, I wouldn't, to tell you the name.

By Mr. Manion: I object to his characterizing him as an agent, your Honor, unless he can tell us who the agent is.

By Mr. Struett:

Q. What did Mr. Sobieraj tell you as to this dinner he arranged?

A. He said he arranged—he had a friend of his he wants to take along with him.

Q. Did he tell you where the friend worked?

A. Well, he said he worked for the Department, one of the departments here.

Q. Did you go to that dinner?

636 A. Yes, I did, yes.

Q. Where did you have that dinner?

A. This was at Como's restaurant on Milwaukee Avenue.

Q. Who was present, you?

A. Myself.

Q. Mr. Sobieraj?

A. And this gentleman.

Q. And the gentleman whom he said worked in the Department, is that right?

A. That is right.

Q. What was the subject of that conversation?

By the Court: Now what he said was "worked in one of the departments".

By Mr. Struett: All right, one of the departments.

By Mr. Manion: Do you know which department?

By Mr. Struett:

Q. Do you know which department he said?

A. Revenue Department, that is what he said.

By Mr. Manion: The Federal Revenue Department? Or State, or who?

By the Witness: No, not State, the Government.

637 By Mr. Manion: Did this man identify himself to you?

By the Witness: No, I didn't ask for any.

There was a friend of Sobieraj, so I took him for his word.

638 By Mr. Struett:

Q. Now, what was said at that meeting?

A. Well, the question come up about cash, see; and he asked me, he said, "Well, how was this done?"

We went through the procedure that he received this here, Sobieraj, one per cent cash on these loans, and he said, "Was there anybody present most of the time?"

I said, "Evidently none, most of the time nobody saw; and if they did, I wouldn't know."

And then, well, he said, "In that case it would be pretty hard to prove the cash."

Q. Now, Mr. Marzec—

By Mr. Manion: Your Honor, I would move to strike that whole testimony as to a conversation with an unidentified person. I don't think it is material. In the first place, we can't establish whom he is talking to.

By the Court: Well, what do you think it tends to prove?

By Mr. Struett: I intend to prove—

By the Court: What do you think it tends to
639 prove?

By Mr. Struett: It tends to prove my defense, your Honor.

By the Court: Well, no, no, no, that is too general for me. What fact or group of facts?

By Mr. Struett: Of the circumstances under which he went to the agent and denied this matter.

By the Court: Now I am talking to this man—

By Mr. Struett: With Sobieraj, one of the recipients of these commissions.

By the Court: Who said what?

By Mr. Struett:

Q. Will you tell him? They said it was cash, they would be hard to prove they went into this thing.

By Mr. Manion: It is immaterial as to either the issue of whether there is a tax deficiency or whether there is an intent to evade.

By the Court: Sustained.

Is there a motion to strike?

640 By Mr. Manion: Yes, there is a motion to strike.

By the Court: Let it be stricken.

By Mr. Struett: Take an exception. I understand now you don't have to take an exception?

By the Court: I don't know.

By Mr. Struett: Well, then, I take an exception to the ruling of the Court.

By Mr. Struett:

Q. Now, then, did you, after your conversation with Mr. Miller which you have detailed, have a conversation with Mr. Brandt or did you have another conversation with Mr. Miller?

A. No. I then went over to Mr. Brandt and I told him the same thing.

Q. What did you tell him, not the same thing, what did you tell him?

A. I said to Brandt that from the information I have, all this cash that has been paid out has been reported—not reported by any of the parties that got the cash, that is, Sobieraj said he got it but he didn't report it and also Kusper, that nobody reported the cash.

Q. What did Mr. Brandt say?

641 A. Well, he said, "Did you take care of it?"

I said, "With the amount of money I distribute and what is left to me, how can I pay everybody's tax?"

Q. Now, then, did you subsequent to that conversation have a conversation with Mr. Miller, Mr. Max Miller?

A. Well, I went back there later on.

Q. About how much time do you mean "later on"?

A. Well, we generally, most of my time would be on Saturdays because I work as an employee and my time requires that I be there so it would be probably on a Saturday.

Q. What did you say and what did Mr. Miller say?

A. And from the conversation about this whole matter he said to me, he said he talked to Brandt and the appraiser Sobieraj and Kusper, and he said they told him that he should advise me or tell me to get a lawyer.

Q. What did you tell Mr. Miller?

A. I said, "Mr. Miller, I will probably find out whether that is so or not."

By Mr. Manion: Just a minute. I will move to

642 strike his testimony as to this conversation with Max Miller as not being material.

By the Court: Sustained. Strike it out.

By Mr. Manion: It is not material to the issues in this case.

By Mr. Struett:

Q. Then did you go back and see Mr. Brandt?

A. Yes, I did.

643 Q. What did you tell Mr. Brandt?

A. I told Mr. Brandt that the conversation I had with Mr. Miller and he said he agreed, "That is correct, you get yourself a lawyer because" he said, "this cash is not disclosed and we will settle this matter later on after the investigation is completed."

Q. Now, did you also talk to Mr. Sobieraj about it?

A. Yes, I did. I told him I talked to Brandt about it and he said to me, he said, "Just keep quiet, and" he said, "when this is all investigated" he said, "when it comes to a head we will settle the bill."

Q. Now, then, did you go back to Mr. Miller again after your conversations with Mr. Sobieraj and Mr. Brandt?

A. Oh, yes, yes.

I went to Miller and at that time he arranged for an appointment with the attorney.

Q. Now, what did he say and what did you say at that time?

A. Well, I said, "All right, you called him in. Introduce me to him and I will talk to him and find out

644 who he is."

Q. Whom did he recommend to you?

A. He recommended Tyrrell Richardson, and he called him up.

And then the man come over and we discussed this whole case in his presence in Miller's office; and thereafter we had occasional meetings on a Saturday; on Saturdays we would discuss this here situation, the loans that were to be made, the way the commissions were paid, and we would go out and eat in different restaurants and talk about the matter.

Q. Now, Mr. Marzec, you used to go to Mr. Miller's office Saturday to get this money, didn't you?

A. That is right.

Q. That is why you mentioned Saturday.

Now shortly thereafter did Mr. Richardson recommend to you an accountant?

A. Oh, well, this was before the first of the year, yet; it was still in 1950 after all these conversations, he said, "Well" he said, "I think we had better get an accountant to go through your records and see what you have on your books."

645 Q. Now, at that time, which is, as I understand it, between the months of October, November or December of 1950, did you pay Mr. Richardson any money?

By Mr. Manion: I object to the materiality of that, your Honor.

By the Court: Sustained.

By Mr. Struett:

Q. Now, then, did Mr. Wilson come out to your home?

A. Well, when we talked with Richardson, Miller was present when he suggested this accountant. He give me the name of the accountant.

By the Court: Well, who gave you the name of the accountant?

By the Witness: Richardson did, and he said it was a friend of his, he has been dealing with him for many years, that he took many accounts, took care of many accounts for him, so he thought he was a good man to have.

So I made an appointment with Wilson. He came up to my house to see me.

By Mr. Struett:

646 Q. Now, about when would you say Mr. Wilson came to your house?

A. Oh, I think it was around the first of the year somewhere, 1950.

Q. Either the latter part of the year 1950 or the first part of 1951?

A. That is right.

By Mr. Struett: Do you have Wilson's power of attorney, Mr. Manion?

By Mr. Manion: No, Mr. Struett, there is no reason that we should have it here; you know that as well as I do. It is no part of our record.

By Mr. Struett: It is no part of the files?

By Mr. Manion: Part of the Bureau record, you with five years in the Regional office ought to know the procedure.

Mr. Struett: Maybe not; I beg your pardon. You may be right.

By Mr. Struett:

Q. Now, when Mr. Richardson or Mr. Wilson came to your house, what did he say to you and what did
647 you say to him, to the best of your recollection?

A. Well, when he introduced himself and he come in there, I thought with his secretary, if I am not mistaken, and the conversation was about the income tax. And he was telling me how good he was and how many cases he handled, that he took care of all his cases properly; that is, these clients were satisfied and that he said he worked for a few years with Richardson.

Naturally I said, "Well, I would consider, and I think his qualifications were all right." That I would consider hiring him for my accountant.

Q. Now, did you a few days later go over to his office?

A. Well, after that time when I agreed to take his services, well, then, after that I went to his office and brought over my records to him.

648 Q. Now, did you have any conversation with him at that time?

By the Court: Well, when did you agree to have him as your attorney?

By the Witness: When he was up at my home.

By the Court: The first time,

By the Witness: That is right.

By Mr. Struett:

Q. You never met the man before?

A. No, I never met him before.

Q. Now, did you have any conversation with him when you took your records over to his office?

A. Oh, yes.

He examined the records over there and he asked me how they were. I said they agreed with the income tax that I made out.

He said, "There might be variations, I understand there is some with Miller, but not much."

And that was it.

He said, then he said, well, he will have to have more time to go into it further.

Q. Did you discuss with him these commissions, 649 these other commissions?

A. Well, as we went into this problem, he says, "What is the situation now that you are in?"

I said, "Well, there is a question of commissions being collected. I pay them out. I pay the treasurer, I pay the appraiser, and I pay the attorney, and there were checks, there was cash, and evidently from the information," I said, "I got now, that none of the cash was reported."

Q. And what did he say?

A. Well, he said to me, "Well, if it isn't reported, there is an investigation going on", he said, "the best thing is to say nothing, let it come to a head and then we will settle it."

Q. Now, then, have you got those Banach letters, please?

By Mr. Manion: The Banach letters?

By Mr. Struett: Yes.

By Mr. Manion: Here you are, Mr. Struett, Exhibits 31 and 32.

By Mr. Struett: Have you got those forms 1092, 650 is that the one dated about February 24th?

By Mr. Manion: Here it is.

By Mr. Struett:

Q. Now, I show you Government's Exhibits 30 marked for identification—rather received in evidence, which is a form 1099 addressed to you which indicates that Mr. Banach paid you $39,820.00, is that correct?

A. That is correct.

Q. Now, did you have any conversation with Mr. Wilson concerning that document?

A. When I received this notice, I took it to Mr. Wilson and I showed him this notice; and I said to him, I said, "I don't agree with this figure, it is out of proportion." We discussed this further and he said to me, "Well, if you report this" he said, "this will disclose that there is cash being paid out," so he said, "you will have to forget about it."

So that was the end of that conversation at that time. And he said, "I will send this back and tell them we never got the money."

Q. You will send it back?

651 A. Send it back with a letter, I think he did, to Banach.

Q. Did you see this letter, a copy of it, or were you there when it was sent?

By Mr. Manion: Which letter was that, please?

By Mr. Struett: That is the letter to the Internal Revenue Department and to Banach that this man did not receive any of that Banach money.

By Mr. Manion: Is that Exhibit 31?

By Mr. Struett: I think it is, isn't it?

I will identify it.

By Mr. Struett:

Q. Did you see that letter?

A. No, I didn't see it.

Q. You never saw this letter of February 24, 1951?

A. He wrote the letter but he didn't show it to me.

Q. I see. That is Government's Exhibit No. 31.

Now, a few days later did he show you a letter
652 which he received from Louis Samuels & Company?

A. Well, he spoke to me about a letter he received from Banach.

Q. Give us the date, about the date that document bears?

A. Well, it would be about that time because it was before March 15th deadline for filing amended returns, or filing returns, and this is 1950 which was due them at that time, so in the conversation he said, "Now," he said, "that we are working on this case, we are trying to settle this whole thing without disclosing how the divisions were made," he said to me, "well, if we finally come to a settlement, we could pick this up, report it and by doing so, to pick up your share and at the same time it probably will show overpayments or over-report on your total tax," so he made an amended return.

653 By Mr. Struett: Give me Government's Exhibit No. 3 marked for identification.

(Mr. Manion handed a document to Mr. Struett.)

By Mr. Struett:

Q. I show you Government's Exhibit 3 received in evidence and ask you whether or not that is the amended return that you filed pursuant to your discussion with Mr. Wilson, as related.

A. This is the second amended return. I believe there was another one before it. It pertained to some errors,

and this is the amended return in which that amount of money was picked up.

Q. You filed that after discussing this entire situation with Mr. Wilson?

A. After the correspondence between Banach and myself was filed, in June, I believe it was.

Q. June of 1951?

A. That is right.

Q. Now, I direct your attention to dates. You first talked to Mr. Wilson about this matter, this Banach matter, and the situation, as I understand it, in February—

By Mr. Struett: Did I hand that back to you, Mr.
654 Manion?

By Mr. Manion: What was that?

By Mr. Struett: No. 1099.

By Mr. Struett:

Q. (Continuing) —about the date you wrote this letter, about February 24, is that correct?

A. What is the question?

Q. You talked to Mr. Wilson about this Banach matter at the time you received this 1099 and he wrote this letter?

A. That is right.

Q. And approximately four months later, on June 8, 1951, you filed an amended return picking this up?

A. That is right.

Q. Now, in the meantime and in between those two dates, and specifically on April 12, 1951, did you appear at a conference at the Intelligence Unit of the Bureau of Internal Revenue?

A. If it appears so.

Q. I show you Defendant's Exhibit 15-A marked for identification and ask you whether or not that document portrays what occurred at that time?

A. Substantially the same as this, yes.

655 Q. Now, did you, prior to going there, discuss this situation with Mr. Richardson and with Mr. Wilson?

A. I did. I talked to Richardson about this matter and I said to him that he ought to, as my attorney, go in there in my place because, I said, "I cannot go there because I cannot talk."

And he said to me, well, he said, "You have to go there."

So I said then, "I am not going alone." So he suggested Wilson go along with me. I think it was Wilson.

Q. Now, did you discuss with him at that time what you were going to say there?

A. Well, I inquired what the questions would be. He said, "Evidently they are going to ask you whether you got the cash or not."

Q. Did he tell you what to say?

A. He said, "Well, if they do, if you disclose it then it is wide open, you will have an investigation of all the officers. If you don't," he said, "you will stay in one place and when it gets to the proper channels," he said, "we will settle it."

Q. Now, did you have a conversation with Mr. Wilson before you went to that meeting of April 21 after 656 your conversation with Mr. Richardson?

A. Well, that was the same understanding, that I could not go and disclose anything because then that would open it up, a new investigation, and cause disturbance in the organization.

By Mr. Struett: Let me have that exhibit from the Regional Counsel's office.

(Mr. Manion handed a document to Mr. Struett.)

By Mr. Struett:

Q. I show you Defendant's—

By Mr. Struett: Mark this next one.

(Thereupon said document was marked Defendant's Exhibit 32 for identification.)

By Mr. Struett:

Q. I show you Defendant's Exhibit No. 32 marked for identification and ask you what that is.

A. It is a check dated June 21, '52, check No. 729, paid to the order of Tyrrell Richardson, $500.00 for services.

Q. Now, is that the first money that you ever paid Mr. Richardson?

By Mr. Manion: I object to the materiality of what he paid Mr. Richardson.

657 By the Court: Sustained.

By Mr. Struett: He is his lawyer.

By Mr. Manion: We are not charging Mr. Richardson for charging excessive fees, Mr. Struett.

Q. Did you pay Mr. Richardson any other different sums of money at any time?

By Mr. Manion: I object to that.

By the Court: Sustained.

By Mr. Struett:

Q. And in whose presence did you pay Mr. Richardson that money?

By Mr. Manion: I object to that.

By the Court: Sustained.

By Mr. Struett:

Q. Now, I show you Government's Exhibit 34 marked for identification, and which I want re-marked as Defendant's Exhibit—

By Mr. Struett: Mark this the next number.

(Thereupon said document was marked Defendant's Exhibit 33 for identification.)

658 By Mr. Struett:

Q. (Continuing) —which purports to be a transcript of the proceedings held in the Regional Counsel's

office, attended by James T. Dewan, Special Attorney, Mr. Riewer, Mr. Tyrrell Richardson, Mr. Arthur J. Wilson, and Mr. Joseph T, Marzec, taxpayer.

Were you present at that?

A. Yes, I was.

659 Q. And did you have any conversation with either Mr. Richardson or Mr. Wilson prior to your attending that conference?

A. Yes, I did.

Q. And what was that conversation?

A. Mr. Richardson, I believe, told me that he made this appointment. I think he said it was King's office, and he told me that we were going to that meeting, and under no conditions, "Are you to answer any question."

"If there are any questions to be asked," he said, "I will do the answering."

Q. There were some questions asked you there, weren't there?

A. Yes, but he said at this meeting the question of monies "is not to be answered by you."

Q. Now, at the conclusion of that meeting Mr. Richardson took the position, did he not—it is detailed here—that you had not told him any of these facts and that if your signature were on any of those checks you were hooked and you were going to the penitentiary; is that correct?

By Mr. Manion: I object to him leading the witness.

660 By the Court: Sustained.

By Mr. Struett:

Q. Now, right after that, did you have a conversation with Mr. Wilson about this thing?

A. After this meeting we had there, from what I heard, I talked to Miller, I said—

Mr. Manion: I object to this, before you get into the conversation.

By the Court: Sustained.

By Mr. Struett:

Q. Did you then have a conversation with Mr. Brandt about this claimed meeting?

A. About the meeting?

Q. Yes.

A. Yes, I talked to him about this meeting. I said, "Our attorney" that we had, "evidently is not telling the truth, he has everything twisted." I said, "There is something wrong here", and I did not know what it was.

Q. What did he say?

A. Well, he said everything would straighten out by itself, "if you wait, this thing will come to a head and we will get our bill to pay." And he added to that, "We
661 are going into this year here. We are elected officers. We have all the good years to make the money because we will make the loans."

Q. Now, did you ever hear or see—hear from or see Mr. Richardson or Mr. Wilson after these proceedings which took place in the Regional counsel's office as of September 12, 1952?

A. Thereafter I did not see any of them. In fact, I talked to Mr. Miller about locating Mr. Richardson. I finally got his place of business. I went over to see if I could talk to him. He just had a small cubbyhole in an office and Wilson the same way.

Thereafter I did not hear from them any more.

662 Q. Now, I show you Defendant's Exhibit No. 16 and 16-A marked for identification and ask you whether or not you have ever seen that letter or a copy of that letter before it was produced by Mr. Wilson in court the other day?

A. No, I never saw the copy or original at any time.

Q. Now, when was the first time that you discovered that the case against you had been forwarded to the Department of Justice?

By Mr. Manion: I object to the materiality of that question.

By the Court: Sustained.

By Mr. Struett:

Q. You later found out this case was in the office of the United States Attorney, did you not?

A. Yes, I did.

Q. And you employed new counsel?

A. That is right.

By Mr. Struett: Will you mark these, please?

(Thereupon said documents were marked respectively Defendant's Exhibit 34 through 42 for identification.)

663 By Mr. Struett:

Q. I show you Defendant's Exhibits Nos. 34 to 42 inclusive, marked for identification, and ask you to state what they were—what they are?

A. These are notes I kept as I paid out money.

Q. For what year?

A. Oh, these would be—it would include '49 and '50, but they are not complete.

Q. And you searched for the others?

A. That is correct.

Q. And did you at the time you paid out this money make similar notes covering every sum that you paid out and to whom?

A. That is correct.

Q. Now, you had delivered those to the United States Attorney's office way back in August, 1955, hadn't you?

A. That is right, with the accountant, I think it was.

Q. It was Mr. Hauptman and Mr. Reiger?

A. Yes.

By Mr. Struett: Your Honor, in light of your rulings I do not want to go into some other matters. I would
664 like to make my offers of proof. I would like to

develop what I have my theory of in this case and give it to you and then let you pass on various offers of proof, because in light of some of your rulings here I gather you have certain definite ideas on this, and there is no use me wasting your time and the jury's time on it.

By the Court: Have you concluded your examination except for those?

By Mr. Struett: Well, practically concluded it.

By the Court: Well, conclude it and then we will take it up.

By Mr. Struett: I mean, your Honor, it is had for me to conclude it without getting this other matter before your Honor to pass on. I am very frank with you.

By the Court: Take a short recess, ladies and gentlemen.

(Thereupon a short recess was taken.)

(Thereupon the following further proceedings were
6665 had in open court, outside the hearing and presence of the jury:)

By Mr. Struett: Now, if your Honor please, I want to make my motion clear. I want to make my theory and my offers of proof of what I have in mind, because there is no use calling all these witnesses in and having to make an offer of proof and run the jury out.

Now, my theory of this case, your Honor, is this. This man was a collector here. He made these distributions of these commissions to these other men.

Investigation of the Bureau started. He had them under wraps. They got his lawyer for him—

By the Court: Well, now, your evidence does not show that. You have been talking about that ever since we began. Your evidence shows that one of the lenders testified—

By Mr. Struett: That is right, and he took it up with these people and he told them to do it.

666 By the Court: Max E. Miller.

By Mr. Struett: That is right.

By the Court: Max Miller told him that Mr. Richardson was in effect a good lawyer, he ought to hire him. "You need a lawyer."

He said he talked it over and told that, or something like it, to one or two of the others and they said they probably did need a lawyer, or words to that effect.

That does not mean they hired a lawyer for him.

By Mr. Struett: I am not so sure.

By the Court: Well, I say it doesn't. That is the way it is. It may be otherwise later, but that is the way it is now.

By Mr. Struett: Now, my position is he told him he would settle this case.

By the Court: Hired a lawyer?

By Mr. Struett: Just a minute.

By the Court: You may think that later too.

667 By Mr. Struett: For instance, here, your Honor, you sustained an objection to prove to show he did not pay Richardson anything. That is a material fact.

By the Court: He paid him $500.00, that is what you wanted.

By Mr. Struett: After a year and a half. First I wanted to show he asked him for no money.

By the Court: I don't care. I do not want to try the world, I want to try this defendant.

By Mr. Struett: Now, my position is he was not adequately represented.

By the Court: Now, you get to your offers. I have heard your contentions.

By Mr. Struett: All right. What I wanted to prove here, your Honor, is what this man did after we got into this case.

By the Court: Who is "this man"?

By Mr. Struett: Mr. Marzec.

By the Court: What he did?

By Mr. Struett: Yes, has a bearing upon this whole thing.

By the Court: Well, tell me in detail what you
668 want.

By Mr. Struett: All right. Immediately after he hired Mr. Rieger and myself we put the accountants to work on this case.

We went over to the United States Attorney's office, we told them that they did not have the right people, that we would make available to them all our evidence, furnish them with information, give it to them.

Thereafter they wanted a written statement from him, which I gave him, prepared for him, a long, lengthy statement, and prepared a lot of exhibits for them, prepared these blue sheets here and carried them into effect on other documents showing this entire situation;

That all of these documents were delivered to them, and he fully cooperated with them, made a full disclosure to them.

They have had these documents for years. Now, that is the whole part here, your Honor, and I am giving it to you.

669 By the Court: Tell me what you want to prove.

By Mr. Struett: We had a conversation with Mr. Tieken and explained this man's returns covered all the amounts of his unreported income; we had net worth statements to back it up and we would be available to him. We had documents and we had other statements there.

Now, all that proof I want to offer on this matter.

By the Court: Is that all?

By Mr. Struett: Well, it is in substance the whole story.

By the Court: Any objection?

By Mr. Manion: Yes, we object to the materiality of all of it. I would note this in passing, that Mr. Struett now says these documents which were marked today as Defendant's Exhibits 34 through 42 inclusive for identification, tells us nothing. He just told the Court now these were prepared for the U. S. Attorney's office.

By Mr. Struett: I did not say that. I did not mean
670 to say that they were delivered to the United States Attorney's office on November—what was the date?

By Mr. Manion: August 21, 1955.

By Mr. Struett: Well, I will proceed to offer my proof on this thing.

By the Court: Is that all?

By Mr. Manion: We object to the materiality of it.

By the Court: All right, objection sustained.

By Mr. Struett: My desire, sir, was—

By the Court: Wait. Was I just listening to loose conversation? I though you were making a note.

By Mr. Struett: I am making an offer. I am making an offer of proof. I offer to prove by this witness—

By the Court: Well, now, how is it going to differ from what you said to me?

By Mr. Struett: It is going to be very, very full and very, very complete.

By the Court: I asked you if that was all. Not once, but at least twice.

671 By Mr. Struett: I am going to make a complete offer of proof as to what each witness would testify to, and I have got that right here.

By the Court: Hereafter, you listen to what I say to you. I asked you if that was all you expected to prove and you said that was substantially all, whereupon I asked if there was an objection and I ruled.

Now, you pay attention to what I ask you.

By Mr. Struett: May I make my offer of proof now?

By the Court: I thought you made it, but now go ahead and make it and make it complete, and as quickly as you can.

By Mr. Struett: It will take me quite a little time.

By the Court: I haven't any doubt it will.

By Mr. Struett: I offer to prove by this witness that at the time he employed Mr. Tyrrell A. Richardson he
672 was not asked for any money and he gave Mr. Richardson no money.

That he paid Mr. Richardson no money until June 21, 1952, at which time he delivered to him a check, Defendant's Exhibit No. 32 for identification for $500.00.

That it was delivered to him in the presence of Mr. Miller, that Mr. Richardson—

By the Court: Not "him." Will you please make a definite statement of what you intend to prove. Who is "him"?

By Mr. Struett: Would the Reporter read that last part back, please?

(Thereupon the record was read as above recorded.)

By Mr. Struett: It was delivered to Mr. Richardson. I beg your Honor's pardon. In the presence of Mr. Miller. Mr. Richardson then wanted a thousand dollars. Mr. Miller said, "Give him $500.00."

And that was all the money that he at any time paid Mr. Richardson. I then offer to prove by this witness
673 that after the hearing in the Regional Counsel's office on September 12, 1952, he went back to Mr. Miller and asked him what was happening, whether these people were double-crossing him and whether Richardson was double-crossing him.

Mr. Richardson said, "No, that is just part of the plan. Say nothing, do nothing."

I offer to prove by this same witness that from September 25, 1952 he had no knowledge whatsoever of the status of his case, that during that same period of time he was being assured by Mr. Miller that the matter would be settled, and "just wait," they would get the bill.

674 In the fall of 1952 he was told by Mr. Miller that he would have a Christmas present for him and that the whole case would be settled when he got back and that the bills would be paid and everything would be over.

That in the summer of 1953 when he went on a fishing trip he was told that when he got back—

By the Court: Now, I asked you to quit using pronouns and use names. "He was told." Who told him?

By Mr. Struett: Mr. Miller, that it would be a short time. By the time he got he got back this case would be settled and everything was going fine.

That sometime in September of 1953, a year later, Mr. Miller came out to the office and told him that he was in trouble, he was going to be indicted and that he would go to the penitentiary.

By the Court: He? Who?

By Mr. Struett: Mr. Marzec.

By the Court: Now, do not have me ask you that again. Now, just tell me what you wanted to tell

675 me and name the persons.

By Mr. Struett: That then Mr. Miller sent him to another lawyer who was to make inquiry as to the status of the case. He found, this other lawyer—no, I mean, that then Mr. Miller advised him that the case was out in the United States Attorney's office ready for prosecution as to him only.

That he asked Mr. Miller what about these other defendants and Mr. Miller said that they had furnished the Government with affidavits that they had not shared in these commissions.

That takes care of the first part of my offer of proof, and if I can have a ruling on that I will proceed, or if you want me to go through all of this, I will go through all of it.

By the Court: Go ahead.

By Mr. Struett: I now offer to prove by this witness that Mr. Miller then took him over to Mr. Rieger's office, that I was called into the case, the matter was discussed at great length.

676 I now offer to prove by this witness that Mr. Miller then took him over to Rieger's office; that I was called into the case, the matter was discussed at great length, and that later this witness, myself, and Mr. Rieger appeared at a conference in the United States Attorney's office.

During that conference I represented to those present, Mr. Tobin, was from the United States Attorney's office, Mr. Crane was a special agent, Mr. Rieger was there, and I was there, and witness Marzec.

I represented to them in substance they did not have the right parties and the real people who got in this commission, that this witness, Mr. Marzec had much information available to them to establish that he had passed on these commissions to others; that he was willing to fully cooperate with the Government, make available to them every fact that he had at his hands, and that during that conversation he was asked whether

677 he would appear before the Grand Jury, sign an immunity waiver, and he stated that he would.

He was asked whether he would furnish or prepare a net worth statement to support his statements that he had paid these commissions to these other parties and he said that he would.

During the same conversation—that is sufficient for that.

Then, thereafter, I will prove by the witness—I will give your Honor the benefit of the doubt.

By the Court: Don't give me the benefit of the doubt.

By Mr. Struett: All right.

I will prove by other witnesses, I will just tie it in, that we were requested to get together a written statement of the facts supported by the documentary evidence; that this statement was prepared by myself, Mr. Rieger, comprising 120 pages; that it was supported by much
678 documentary proof, and as I recollect, by these various sheets which I have mentioned.

I then offered to prove by this same witness that later on, November 8, 1954, this witness attended a conference in the office of the United States Attorney at which was present Mr. Reeb from the United States Attorney's office, Special Agent Wolfe, Special Agent Clement, and there is another agent's name—

By Mr. Manion: Freiberger.

By Mr. Struett: (Continuing) Freiberger, and at that time this statement which comprises 120 pages, was delivered to Mr. Reeb; that thereafter in August of 1955 this witness, together with Mr. Rieger and his accountant, went over to the United States Attorney's office and delivered to the United States Attorney Reeb in the presence of this witness, photostatic copies of originals of Government's Exhibits—

By Mr. Manion: Defendant's Exhibits.

679 By Mr. Struett: (Continuing) —Defendant's Exhibits 34 to 42, inclusive.

As I understand it, the photostats are marked as Defendant's Exhibits 19 and 20. I reserve the right to correct that, wherein it shows each and—

The Court: You reserve the right to correct what?

By Mr. Manion: These have not been marked as Government's Exhibits.

By Mr. Struett: Well, the photostats have.

By Mr. Manion: No, they have not, unless they have been marked as Defendant's Exhibits.

By Mr. Struett: Well, they have been marked as Defendant's Exhibits.

That he gave them a complete summary of all of the transactions on these buildings for the year 1949 and 1950, showing the distribution of these commissions.

That at this conference it was stated to the United
680 States Attorney Reeb—oh, that at the same conference there was made available to the United States Attorney all of this Defendant's checks for these years, and that we had the net worth statement which had been prepared by our accountants which would show, in substance, the fact, bearing in mind the amended return filed herein, which is Government's Exhibit 3, this man had reported income possibly in excess of any income he was due to report, so it wasn't in the same years.

Now, I offer to show that these documents were accepted by the United States Attorneys, photostats were made, and they were returned to us.

Now, that is my offer as to this witness.

By the Court: Have you concluded?

By Mr. Struett: I think that concludes it.

Only as to him, your Honor, I have concluded as to him, the witness on the stand.

By the Court: Any objection?

681 By Mr. Manion: Your Honor, we would object to all of the parts of the Defendant's offer of proof on the grounds of its materiality excepting the following:

The Government through the witnesses Wolfe, Osheroff and Riewer, as well as the witness Wilson, has offered testimony of denials made by Defendant Marzec presently on the stand of the receipt of any portion of this

income on September 26, 1950, to Osheroff; April 12, 1951, under oath; September 20, 1951, at a conference; and September 12, 1952, at a conference.

It has also offered the testimony of the accountant Wilson who has testified that the witness and Defendant Marzec denied to him the receipt of these commissions from Henry Banach through the time that Mr. Wilson was representing Marzec.

To the extent that any portion of those, or those portions of Mr. Marzec's testimony in those regards
682 would go to contradict or are material, in the denial of any of this testimony, to those portions we would have no objection because that evidence has been offered by the Government as tending to show the intent of the Defendant and his failure to report his taxes.

But as to the remainder of these representations, certainyl as to everything that happened subsequently to September 12, 1952, we would most seriously object as to materiality and we would object to the other portions of it excepting on those grounds. If there are any portions that Mr. Marzec intends to testify as to—that is, if he is going to deny these statements or attempt to explain them, the ones we have offered in evidence, we believe he would be entitled to do that; further than that, we object to the rest of it.

683 The Court: I didn't hear any offers to contradict any testimony offered.

By Mr. Manion: I didn't hear any specifically, in case Mr. Struett has that in mind, I want to be fair to him at this time, and I certainly don't want to object to anything of that nature.

By the Court: Is it your purpose to offer specific denials of any of those things?

Mr. Struett: He made the statement, didn't he? There is no question about it.

By the Court: Answer my question.

By Mr. Struett: No.

By the Court: You don't intend to offer specific denials of those matters counsel referred to?

By Mr. Struett: I have no such intention of offering any such proof.

By the Court: Objection will be sustained.

By the Court: Are you through with this witness?

684 By Mr. Struett: I am through with this witness on my offer of proof, yes, your Honor.

By the Court: Do you want to cross examine this witness?

By Mr. Manion: Yes, we do, your Honor.

By the Court: Do you tender him for cross examination?

By Mr. Struett: Yes, we tender him.

(Whereupon the following proceedings were had in the presence and hearing of the jury:—)

Cross Examination by Mr. Manion.

Q. Mr. Marzec, I show you three consecutive photostatic sheets which have been marked Defendant's Exhibits for identification, 15, 15-A and 15-B and I ask you if those sheets correctly report the transcript of a statement given by you on April 12, 1951?

A. It may be so.

685 Q. Well, do you know whether it is so or it is not so?

By the Court: What is the answer?

By the Witness: I said it may be so.

By the Court: Well, is it a fact?

By the Witness: Well, I wouldn't remember it.

By the Court: What?

By the Witness: I wouldn't remember the entire incident.

By the Court: Let him see it and let it serve his recollection.

(The said documents were handed to the witness by Mr. Manion.)

By Mr. Manion:

Q. Have you examined it, Mr. Marzec?

A. Yes, I did.

Q. Does that document, Defendant's Exhibit 15, 15-A and 15-B correctly record and transcribe your statement at that time

A. Yes, it would be.

Q. And you were questioned by Agent Johnson of the Internal Revenue Service on April 12, 1951, is that correct, sir?

686 A. I wouldn't know Johnson; I don't know whether it was Johnson.

Q. You were questioned by an agent on that date?

A. I was questioned by an agent, yes.

Q. Now, before questioning you, he gave you an oath, didn't he?

A. Yes, sir.

Q. He placed you under oath?

A. That is right.

Q. Now, did you, while under oath on April 12, 1951, deny that you had received commissions from Henry Banach?

A. Yes, I did, on instructions of my attorney.

Q. You were under oath, were you?

A. That is right.

Q. Did you receive commissions from Henry Banach?

A. Yes, I did.

Q. Did you report those commissions for each year, 1949 to 1950 in your income tax returns?

A. No, they were not reported.

By the Court: What is the latter part of the answer?

By the Witness: They were not reported.

687 By Mr. Manion:

Q. Did you keep any portion of these commissions that you received from Henry Banach?

A. I kept my share only.

Q. Mr. Marzec, do you have any records prepared from the time you received these funds, these commissions, showing the amount of commissions you retained and the amount of commissions you paid to others?

A. I generally worked from statements I received. I didn't make individual entries every day.

Q. You worked from what?

A. From statements I would receive from these brokers.

688 Q. I can't understand you, sir. Statements?

A. From statements.

By Mr. Struett: Keep your hand down.

By the Witness:

A. From the statements they submitted to me.

By the Court: Who?

By the Witness:

A. The brokers, whatever statements.

By Mr. Manion:

Q. What sort of statements did the brokers submit to you, did Henry Banach submit during the year 1949?

A. At the end of the year they would give me statements of the business that we would have had.

Q. Is that when you distributed statements, at the end of the year 1949?

A. No, the money was distributed immediately.

Q. Did you keep records of those funds as you received them?

A. I had those blue notes there is what I kept.

By Mr. Manion: May I see those sheets, please?

By Mr. Manion:

Q. I show you a series of sheets marked as Defendant's Exhibits 34 to 42 for identification and ask
689 you if those are the sheets to which you have just referred?

A. That is right.

Q. Now you don't indicate amounts any place in those sheets, do you, Mr. Marzec?

A. No, I don't.

Q. Did you keep any records of amounts received by you or paid to others?

A. The checks I did because there was—ordinarily I would go according to the loans, I would have the loans.

Q. What do you mean by a check?

A. If I got a check, the amount of the check was there, so I had the amount of the check.

Q. Did you receive the checks that Mr. Milton testified to while he was on the stand for the Government?

A. That is right.

Q. Did you record those checks anywhere?

A. No, I didn't.

Q. You received some checks from Henry Banach, didn't you?

A. I think there was a couple of checks there.

Q. I show you checks marked as Government's Exhibits 27, 27-A, 27-B, 27-L, 27-Q, 27-000, and ask
690 you if you received those checks and if those checks bear your endorsement?

A. Yes, those are my endorsements, sir.

Q. Well, did you record the receipt of any part of those funds in your records?

A. Not besides this, no.

Q. Well, that does not answer the question. By "this" you are referring to Defendant's Exhibits 34 through 42 for identification?

A. That is right.

Q. And there is no receipt of funds recorded anywhere in those sheets, are there?

A. This is according to the amount of the loan.

Q. Well, the amount of commission does not appear, does it?

A. There was standard commission paid or received from each broker, so I know what it was.

Q. Oh, did you charge the same commission to every broker?

A. No, different; every other broker had a different deal.

Q. Did you charge Mr. Miller the same commission in all instances?

A. Excepting those checks were payable to cash.

Q. Well, now, why did you charge them? You had 691 more than one deal then with Mr. Miller, is that right?

A. Oh, yes, quite a few in 1949.

Q. I am talking about commission deals.

A. That is right.

Q. Different commission percentages.

A. No, there was two I remember was five, four; with a few exceptions, I think there was one three or something like that.

Q. You did charge Mr. Miller a different commission at different times then, is that correct?

A. Yes.

Q. Did you always charge Mr. Scott the same commission?

A. Scott was always the same.

Q. Mr. Marzec, I show you a document marked as Government's Exhibit 6 in evidence, and ask you if you received the proceeds of that check, that is $2,550.00 from Thomas G. Scott, as a commission on two properties located at 4711 and 4715 South Greenwood Avenue during the year 1949.

A. This I wouldn't recollect.

Q. Did you hear Mr. Scott testify that he paid those funds to you?

A. Yes, I did.

692 Q. You say you did not receive them?

A. I did not say I didn't receive them, I don't recollect.

Q. Do you know what commission you charged them on this property?

A. Ordinarily Scott's, understanding with Scott was three per cent commission, and if it was an exception, well, then I don't recollect it.

Q. Well, isn't it a fact, Mr. Marzec, that the total mortgage made on those two properties amounted to $95,000.00?

A. I wouldn't remember.

Q. Well, would you like to see the mortgage files?

Mr. Marzec, I have removed two documents from Government's Group Exhibit B for identification, the first being the closing statement for the mortgage by the Polish Roman Catholic Union, 180-J, for 4715 South Greenwood. I ask you if that refreshes your recollection as to the amount of the mortgage made on that property?

A. Well, according to the statement, it is a $60,000.00 mortgage.

Q. You prepared the closing statements, didn't you, Mr. Marzec?

A. Most of the instances I did, but some, not
693 always, I suppose if I wasn't there somebody else prepared them.

Q. I show you the mortgage for loan No. 179-J recorded with the County Recorder for Cook County, Illinois, document 14574261 removed from Government Group Exhibit B which is the mortgage for the adjoining piece of property; and I ask you isn't it the fact that is a $25,000.00 mortgage?

A. That is.

Q. Now, what percentage of the total of those two mortgages of $95,000.00 is $2,550.00, what percentage does that $2,550.00 represent?

A. I wouldn't know.

Q. Does it represent three per cent?

A. Well, to my understanding it was three per cent. Now if this was the first deal it might have been different, but outside of that, the understanding was three per cent commission.

694 Q. Isn't it a fact, Mr. Marzec, you charged these men just exactly what you thought you could get from them?

A. No, I did not.

There was a standard rate on this deal. If there was an exception it was made understandable.

By the Court: What is the amount of that mortgage?

By Mr. Manion: The two mortgages, your Honor, totalled $95,000.00. One is a $25,000.00 mortgage on the property at 4711 South Greenwood; and the building at 4715 South Greenwood is a $60,000.00 mortgage.

By the Court: $60,000.00 and what?

By Mr. Manion: $60,000.00 and $25,000.00.

By the Court: That would be $85,000.00.

By Mr. Manion: $85,000.00. My arithmetic is bad and I stand corrected.

By the Court: What?

By Mr. Manion: I stand corrected, sir, my arithmetic is bad.

695 By the Court: What was the commission?

By Mr. Manion: $2,550.00, is that correct?

By the Witness: That is three per cent.

By Mr. Manion:

Q. Is that three per cent?

A. Yes.

By the Court: $2,000.00—what?

By Mr. Manion: $2,550.00.

By Mr. Manion:

Q. What was your commission charge to Mr. Sheldon?

A. Four per cent, I believe.

Q. How did he pay these things, by check or by check?

A. He paid by cash.

Q. Did he offer to pay you by check?

A. Well, he was given the understanding of when, the first time I met him, that all of the deals would be cash.

Q. You did not record anywhere in your records?

A. Besides that blue note I had—

696 Q. Those would be Defendant's Exhibits 34 through 42 for identification, those blue sheets?

A. That is right, that is where I kept a record of all the money collected.

Q. Well, you don't show the amount of any money on there.

A. I show the amount of the mortgage. I know what the deal is, so I know what I owe to you and the commission paid to the individual officers is always the same.

Q. Did you always pay the individual officers the same percentage in every case?

A. Providing if it was three per cent, I had to change. If it was four, they all got theirs, with exceptions. I knew what the deal was, they knew what it was, and I didn't have the complete records.

Q. Mr. Marzec, isn't it a fact that in 1955 you delivered documents to the United States Attorney's office on which it would appear that you paid different amounts to different officers at different times?

A. But the procedure, once it started, it followed; any change, if the arrangements were changed.

697 By Mr. Manion: Will you mark this Government's Exhibit 1 for identification, please?

(Thereupon the said document was marked Government's Exhibit No. 41 for identification.)

By Mr. Manion: Will you mark this please, as Government's Exhibit No. 42 for identification?

(Thereupon the said document was marked Government's Exhibit No. 42 for identification.)

By Mr. Manion:

Q. Mr. Marzec, I show you a document marked Government's Exhibit No. 41 for identification, consisting of three sheets stapled together headed "For the Year 1949" and ask you if that document has been prepared in your handwriting?

A. That is right.

Q. And I show you a document, Government's Exhibit 42 for identification, consisting of four sheets, and I ask you if that document or the original thereof was prepared in your handwriting?

698 A. That is correct.

By Mr. Manion: May I see those?

By Mr. Manion:

Q. Now, when were those documents prepared, Mr. Marzec, that is, Government's Exhibits 41 and 42 for identification?

A. Well, I am trying to recollect.

Q. Were they prepared on or about the dates they bear?

A. No, it would be later.

Q. And from what records did you prepare these documents?

A. From the records I had available and the mortgage transactions that the company had a record of.

Q. Those records would be what, sir, the records that you had available?

A. Well, I had Hoppe's, I had Miller's; then I had a list of loans made and the amounts that I kept in the office.

Q. You only recorded a portion of the commissions you received from Max Miller and all of the commissions that you received from William Hoppe in your books which you showed to Agent Osheroff, is that correct?

699 A. Miller's commission for 1950, I think were practically all in there.

Q. Well, there were some of them missing, were there not?

A. To my recollection, I don't know if there was some of them missing. I thought they were all in, the '49s, the cash, the checks payable to cash were missing; that is, from the statement.

Q. None of the money that you received from Scott--

A. No, not the cash.

Q. (Continuing) —was recorded at all?

A. Not the cash, no.

700 Q. How about the cashier's checks from Mr. Milton?

A. They were not recorded, besides the note that I kept.

Q. Well, did you keep any notes other than these blue sheets, so we know what we are talking about?

A. No, I only followed up those blue sheets for distribution of the cash.

Q. What did you do in these instances where you received five per cent commission?

A. The distribution went one to each as the prior, two to myself.

Q. Two to yourself?

A. Yes.

Q. Were you receiving commissions before you ever talked to Mr. Brandt about this matter, weren't you?

A. What was the question?

Q. I say, you were receiving commissions in 1947 before you ever talked to Mr. Brandt about this?

A. No, no, I was out of the picture. Mr. Kusper had me out of the picture there; until I got in there, I
701 took the commission with Brandt.

Q. How did Kusper get you out of the picture?

A. He had his broker there and Miller was making the loan through Boksa, and that is where they got their loans and Brandt didn't know anything about it. He wanted to find out what it is. That is how I got in, he called me in.

Q. Did you ever receive a commission from Boksa yourself?

A. No, I didn't, nothing.

Q. Is it not a fact, Mr. Marzec, in December of 1946 you received a commission from Mr. Boksa and gave him a receipt for such commission?

A. No, not that I recollect.

Q. Mr. Marzec, isn't it a fact that early in 1947, some time between the first of 1947 and June 1, 1947, you told Mr. Brandt if he left you alone in this commission collection that you would be willing to give him a share of the commissions you were already collecting?

A. No, I did not.

He told me that he is the boss here and he wants his one per cent or else there would be no loans, because prior to that when he come in, I didn't talk to him.
702 I was on the wrong side of the fence. I was afraid they were going to fire me, as it is, and Sobieraj told me not to talk until he squared it out with Mr. Brandt.

Q. Well, Mr. Marzec, at the confe ence of Mr. Dewan's office, September 12, 1952, you denied yourself, did you not, that you had received brokerage commissions from Thomas Scott?

A. Well, that was the understanding, I was not supposed to talk until they arranged the whole thing.

Q. You denied it yourself, didn't you?

A. At that time, yes.

Q. Did you at any time tell any representative of the United States that you had received any of the money they were asking you about before the time you were advised by Mr. Rieger and Mr. Struett that your case was in the United States Attorney's office?

A. I didn't know it was in the United States Attorney's office until I got these lawyers here.

Q. But did you ever, before that time, ever tell any representative of the United States that you had
703 received these commissions?

A. Well, the understanding I had is I was not supposed to tell anybody.

Q. Did you ever tell anyone, sir, yes or no?

A. I didn't tell them because I was not supposed to tell them.

Q. You did not tell them?

A. That is right.

Q. Did anybody from the Government instruct you not to tell them?

A. Not from the Government, no.

Q. Did anybody from the Government instruct you to lie under oath in 1951?

A. No.

Q. Did you ever tell any representative from the Government that you paid commissions to others during 1949 and 1950 when this investigation was in process at that time?

A. While it was in process?

Q. While the investigation was in process, yes, sir.

A. I don't believe so.

Q. Mr. Marzec, on direct examination you testified that you had delivered checks identified as Defend-
704 ant's Exhibits 27, 28, 29 and 30 and 31 for identification, either to Bruno Sobieraj or Louise Stanczewski.

Now, isn't it a fact that you listed those payments and claimed those payments as deductions in your tax returns for the years 1949 and 1950?

A. These checks, yes, sir.

Q. Yes, sir?

A. That is right.

Q. Did you claim deductions for any cash payments made to Bruno Sobieraj during that year?

A. Cash payments? No, I did not.

Q. Did you claim any payments for any deduction for cash payments made to Frank Brandt?

A. No, I did not.

Q. Did you claim any deductions for cash payments made to Stanley Kusper?

A. No, I did not.

Q. But you did claim deductions for all checks?

A. That is right.

Q. Is that correct?

A. Yes.

Q. Mr. Marzec, I show you Defendant's Exhibit 31
705 for identification. I see pencilled on the lower right hand corner the address 4701 Malden.

I ask you when that address was placed on that document?

A. When this was placed on the document?

Q. Yes, sir.

A. When we were checking these books.

Q. That address was not on that check at the time it was delivered to the United States Attorney?

A. No, it was not. It was to identify the check. That is why it is put on there.

Q. I show you Government's Exhibit 33 for identification, being the cash record of W. Stanczewski and Company, and I direct your attention to the entry August 12, 1950, and ask you if, as a matter of fact, a $450.00 payment from yourself is not recorded on that date?

A. You mean to infer that this is—

Q. I am asking you, is it or is it not a $450.00 payment?

A. There is $450.00 here, yes.

Q. What is the amount of this check?

706 A. $450.00.

Q. $450.00. What is the date of that check, sir?

A. August 12th.

Q. How does that correspond with the date of the record?

A. Mr. Struett—

By Mr. Struett: What do you want?

By the Witness: The other $450.00 check, same date.

By Mr. Struett: Let's find the other $450.00 check right away.

By Mr. Manion: You hold that for redirect examination, Mr. Struett.

By Mr. Manion:

Q. I show you a document marked Defendant's Exhibit No. 30 for identification and direct your attention to the pencilled address appearing in the lower left hand corner of that check.

May I ask you when that address was placed thereon?

A. On examination of this book.

Q. Now the address as shown on those two checks, that is, Defendant's Exhibits 30 and 31 for identifica-

707 tion, were not on those checks at the time they were delivered to the United States Attorney, were they?

A. The United States Attorney's office?

Q. Yes, sir.

A. At what time?

Q. 1954 or 1955, whenever the photostatic copies of those checks were first delivered to us.

Q. All these checks were together and they were delivered at one time.

By the Court: That is not the question.

By Mr. Manion:

Q. I asked you if those addresses were on there at that time?

A. Not the addresses, no. That was added on when I was examining this book.

By the Court: And that was when?

By the Witness: That was here over the week-end.

By the Court: This last week-end?

By the Witness: That is right.

By Mr. Manion:

Q. Mr. Marzec, I show you a document marked as 708 Government's Exhibit 33-B in evidence, the summary prepared by Mr. Worcester.

I direct your attention to the last two entries appearing on the second page thereof, and ask you whether or not as a matter of fact Mr. Worcester credited you for the two payments shown as Defendant's Exhibits 28 and 29 for identification on that exhibit on his schedule?

A. Which items are those?

Q. The last two items appearing on the page.

By Mr. Struett: I object to that as not cross examination. That was not the purpose of these checks being offered.

By the Court: Overruled.

By the Witness: Yes, they appear on the statement here.

By Mr. Manion:

Q. I show you the check marked as Defendant's Exhibit 27 for identification and Government's Exhibit 33-A

in evidence, and ask you if, as a matter of fact, you have not been credited for the payment shown in Defendant's Exhibit 27?

A. That is correct.

709 Q. Mr. Marzec, in addition to the commissions the various brokers testified to on behalf of the Government, isn't it a fact you also received commissions from Harold Schrader during the years 1949 and 1950?

A. Yes, I did.

Q. Did you report any part of those commissions?

A. They were cash and I did not report them.

Q. Did you or did you not also receive commissions from a Mrs. Clyde Cutler during 1949 and 1950?

A. That is correct.

Q. Where are Mrs. Cutler and Mr. Schrader at this time?

A. I believe they died, both.

Q. Mr. Marzec, did you receive from Max Miller during the calendar 1949 at least $21,450.00 as real estate or mortgage commissions paid by him to you?

A. Well, if I had his statement, if I saw his statement I would be able to tell you. It would be more or less about that amount.

Q. Did you receive $30,540.00 during that same period from Henry Banach?

A. That I would not remember.

710 Q. Well, did you receive the payments Mr. Banach testified to on direct examination?

A. I think substantially that is what it was.

Q. Did you receive the sum of $5,355.00 from Thomas G. Scott?

A. That I would not remember either.

Q. Did you receive the payments Mr. Scott testified to?

A. Well, whatever checks he showed me, I mean, the records he had.

Q. Did you receive the sum of $3,350.00 from William J. Hoppe?

A. If there is a record of that.

Q. Now, during the year 1950 did you receive the sum of $35,650.50 from Max Miller?

A. Whatever statement you have there. If that is the same statement there that would be the amount.

Q. Did you receive the amounts testified to by him and did you receive the checks he identified?

A. That is right.

Q. Did you receive the sum of $39,820.00 from Henry Banach?

A. That I would not remember. I do not recall.

711 Q. You filed an amended return, Government's Exhibit 3 in 1951 reporting just exactly that amount.

A. That is right, to adjust our accounts for '49 and '50.

Q. Why is it you took the figure $39,820.00, is that just a coincidence?

A. That is the amount he insisted he gave us.

Q. During 1950?

A. That is right.

Q. That made no account for the $30,549.00 paid in 1949.

A. That was not included in that amount that I know of.

Q. You want this jury to believe that you shared part of that $39,820.00—

By Mr. Struett: I object to that question as being argumentative. "Do you want the jury to believe" something.

By Mr. Manion: I will withdraw the question, your Honor.

By Mr. Manion:

Q. You say you paid part of that $39,820.00 in your amended return, Government's Exhibit 3, to Mr.
712 Brandt, Mr. Kusper and Mr. Sobieraj?

A. Most of it.

Q. Did you show any deductions in Government's Exhibit 3 for any commissions paid to those men?

A. I did not show any.

Q. You reported it, the income, but you did not report a deduction to which you would have been entitled, is that it?

A. That is right.

Q. Now, did you receive $1,725.00 from Thomas G. Scott during the year 1950?

A. It might have been possible.

Q. And you didn't report any part of that, did you, in either Government's Exhibit 3 or Government's Exhibit 2?

A. Not cash, no.

Q. Did you report anything from Thomas Scott in either of those returns, or any tax return filed by you in 1949 or 1950?

A. Well, I do not recollect there were any items reported or not, but mostly it was not reported.

Q. Did you receive the sum of $3,700.00 from Cyril Milton during the year 1950?

A. If that was cash then that was not reported.
713 Q. That was not reported in either your original return, Government's Exhibit 2, or the amended return, Government's Exhibit 3, is that correct?

A. That is right; the amount of $13,000.00 is supposed to cover all that.

Q. What amount of thirteen thousand?

A. Rather, $39,000.00 on the amended return.

Q. $39,820.00 being the amount shown in Henry Banach's 1099?

A. That was picked up that way according to it, the copy and corresponded with all the rest of the cash. Whether the amounts were distributed around, I do not know, I never got all that money alone.

Q. Do you show any distributions in any of your tax returns for the years 194 9and 1950? That would be Government's Exhibits 1, 2 and 3 in evidence, other than the deductions for the checks paid to Bruno Sobieraj with Stanczewski, Stanley Kusper and D. Repsuk?

A. That is right.

Q. Those are the only deductions you have taken?

A. That is right.

Q. Now, did you show any part of that $7,500.00 you received from J. Cutler Sheldon in your 1950 tax return, either Government's Exhibits 2 or 3?

714 A. Those accounts I do not recall.

Q. Did you receive that sum from Mr. Sheldon?

A. I do not know what the sum is.

Q. Did you hear his testimony in the court room?

A. Yes, I did.

Q. Did you receive the figure he testified to?

A. The total figure I would not be able to tell. I would not be able to tell what the total figure was.

Q. Well, did he testify to any payments he did not in fact make to you?

A. He did pay to me?

Q. Did he pay to you the amounts in connection with the mortgages stated by him?

A. I do not know which ones he reported.

Q. Which ones who reported?

A. Sheldon.

Q. I did not ask you what he reported, I asked you

if you received the figures in the sums he said he paid to you.

A. Well, I would not know without going into it whether that is the sum or not.

Q. You kept no records at the time?

A. Besides those notes that I kept for distribution.

715 Q. Your records corresponded with your tax returns, didn't they?

A. Yes, because that is the amount of checks I received.

Q. You received other checks besides those, didn't you, sir?

A. Checks?

Q. Yes.

A. I believe I almost reported all the checks in there.

Q. Do your records anywhere record the deposit of $1950.00 to your bank account by Henry Banach?

A. That I do not recall.

Q. You have seen your records, haven't you?

A. Yes, sir.

Q. You have them?

A. Yes, sir.

Q. Do your records anywhere reflect the receipt of the cashier's checks delivered to you by Cyril Milton during the years 1949 and 1950?

A. Those I believe were cash.

Q. I show you three documents marked as Government's Exhibits 15, 16 and 17, photostatic copies of cashier's checks drawn on the American National Bank by Cyril Milton, and endorsed by him and endorsed

716 by Joseph T. Marzec and ask you if your records anywhere reflect the receipt of those checks?

A. No, they do not.

Q. Those are checks, aren't they?

A. They are checks, all right, but I do not recall. It

happened so many years ago. I do not recall receiving them.

By the Court: You don't recall what?

By the Witness: Receiving them.

By Mr. Manion: I have no further questions of the witness, your Honor.

By Mr. Struett: Your Honor, it is 4:24 and I would like to quit. I am very tired. I would like to go over this matter and check it. Probably my redirect will be very short.

By the Court: We will recess, gentlemen, until ten o'clock tomorrow morning.

By Mr. Struett: Don't you have a call tomorrow morning?

By the Court: Just a minute, ladies and gentlemen, the Court will be engaged for about twenty minutes
717 tomorrow morning at ten o'clock, so you need not come in until 10:20.

• • •

718-738 • • •

739 • • • JOSEPH T. MARZEC, the defendant herein, called as a witness on his own behalf, having been previously duly sworn and examined, resumed the stand and testified further as follows:

Redirect Examination by Mr. Struett.

Q. Mr. Marzec, yesterday you examined this black
740 book, and you again examined, and you brought out these checks which are Defendant's Exhibits 30, 31, 29, 28 and 27, and you said you could not find them in this book?

A. That is correct, yes.

Q. Have they gotten into this book since yesterday, since your cross examination?

A. I don't believe so.

Q. Do you want to look, or will you concede they are not in there?

By Mr. Manion: We did not put them in there last night.

By Mr. Struett:

Q. I mean, did you find those checks entered in that book?

By Mr. Struett: Did you check it?

By Mr. Manion: I had a question with Mr. Marzec only as to one check, and that was the entry of August the 12th, 1950.

By Mr. Struett: All right.

By Mr. Struett:

Q. He wants to know about the August 12th entry.

By Mr. Struett: Mark this as Defendant's Exhibit No. 43 for identification.

741 (Thereupon said document was marked Defendant's Exhibit 43 for identification.)

742 By Mr. Struett:

Q. Will you explain that entry on August 12th? Have you got it before you?

A. Yes, I have. This entry here is of record in the book.

By Mr. Manion: By this entry you mean?

By the Witness: That is the additional check we have here now.

By the Court: Does it have a number on it?

By Mr. Manion: What is the exhibit number?

By the Witness: Exhibit No. 43. That has been reported as in Mrs. Stanczewski's book.

By Mr. Struett:

Q. And the other check of August 12th, which you produced yesterday, which is Government's Exhibit No. 31, does not appear in the book?

A. Does not appear in the book.

Q. Nor the other four checks mentioned?

A. Nor the other four.

Q. I show you Government's Exhibits 36 and 37, 743 marked for identification.

Did you ever receive that document?

A. Evidently I received this document and it is signed by my wife, the receipt.

Q. What did you do with this, if you remember?

A. I took this to my attorney, Mr. Richardson.

Q. What did he tell you about it?

A. He said he would take care of it.

Q. Now, Mr. Marzec, I show you Government's Exhibit 41, marked for identification, and Government's Exhibit No. 42, marked for identification, about which you were interrogated yesterday.

You were present when the originals of this document were offered to the Government, were you not?

A. That is right.

Q. And you prepared it, did you not?

A. Yes, I did.

Q. And you prepared it to the best of your ability, bearing in mind the facts you has testified here to from the records of the buildings and the loans made which you had, and with the additional benefit of Government's Exhibit 42—Nos. 34 to 42, inclusive?

744 By Mr. Manion: I object to the question, your Honor. I think the witness should be allowed to testify from what he prepared the exhibit.

By the Court: Yes, you are leading. Don't lead him. He is your witness.

By Mr. Struett:

Q. What did you prepare it from?

A. I prepared these documents from the original mortgage records that I have submitted to Osheroff when he started the investigation, and in addition from these blue sheets here.

745 Q. And your knowledge of how you had distributed the cash as you testified here yesterday?

A. That is right.

Q. And you did it to the best—

By the Court: Now you are doing the very thing I told you not to do. Don't lead him.

By Mr. Struett: All right.

By Mr. Struett:

Q. Now did you ever receive any complaint from anybody—oh, I beg your pardon—that was delivered in August of 1955, was it not?

By the Court: Again you are leading.

By Mr. Struett:

Q. Well, what date was it delivered, to the best of your recollection?

By the Court: [illegible] you tell him the date and then you ask him the date, I tell you not to lead.

By Mr. Struett: I beg your pardon.

By Mr. Struett:

Q. Do you remember about when it was delivered to the United States Attorney?

A. It was delivered about the summer of 1955.

746 Q. Were you there when it was delivered?

A. I believe I was there with Hauptmann, my counsel.

Q. Now from that time up to the time you got into court, you were never asked by any Government official concerning that document or the figures therein contained?

By Mr. Manion: I object to the relevancy of that.

By the Court: Sustained.

By Mr. Struett:

Q. Now, you were asked yesterday by Mr. Manion whether you told any Government agent or anybody connected with the Bureau that you had shared these commissions with Mr. Brandt, Mr. Kusper and Mr. Sobieraj.

Have you ever told any Government agent that up prior to the time you had accepted the employ—

A. No, I didn't tell any agent.

Q. Nor were you ever asked that question?

A. No, I was not.

Q. To the best of your recollection?

A. That I recollect, no agent ever asked me how 747 I distributed the commissions.

Q. By any Government agent?

A. That is correct.

Q. Now you heard the testimony, did you not, of Mr. Wilson and Mr. Osheroff to the effect that they had a conference between you and Mr. Wilson in September of 1951, and that you refused to say anything, he said you wouldn't talk, do you remember that testimony?

A. I don't recall any such conference.

Q. And as to your best recollection, what conferences did you attend?

A. I believe I attended two conferences, the last one was in King's office.

Q. The two that you have seen the transcript of?

A. That is right, the transcripts I had seen here.

Q. Now, Mr. Manion has asked you whether you told anyody or you ever admitted to anybody of the Bureau during the course of this investigation that you received these commissions and what this actual situation was here as you had declared it, and your answer was up

until the time you had employed Mr. Rieger and my-
748 self, your answer was no.

Now, did you subsequent to the time you employed Mr. Rieger and myself detail this full picture to various people within the Government?

By Mr. Manion: I object to that question. I have no objection if he wants to say what he told people in the Government, but I do object to his being asked conclusively did he detail the full picture to the Government.

By the Court: Yes, sustained.

By Mr. Struett:

Q. Well, did you thereafter advise the Government of this situation?

By Mr. Manion: What did he say to him, whom in the Government?

By the Court: Sustained.

By Mr. Struett:

Q. When and where did you so advise them?

By Mr. Manion: And what did he advise them?

By the Witness:

A. At any occasion or any conference we held—

By Mr. Manion: Object to that. I want these con-
749 versations one at a time.

By the Court: Just fix the time and place, who was present—

By Mr. Struett:

Q. Well, were you—

By the Court: Just a minute, I will tell him what to do.

By Mr. Struett: All right, your Honor.

By the Court: Fix the time and the place and who was present, and what you said.

By the Witness:

A. The first conference we had, I believe, was with Mr. Tobin, Assistant District Attorney. It must have been early in 1954 when we offered—I offered to disclose everything, give them all our documents.

By the Court: Just say what you said.

By the Witness:

A. I offered to disclose all the records—

By Mr. Manion: I object to that.

By the Court: No, "I said, I said."

By the Witness:

A. I said, "that you may have all my records, whatever records I have on these loans and I will also show how these commissions were distributed and I will submit a statement of net worth and any other documents that you wish to have."

By Mr. Struett:

Q. Now, then, did you attend another conference later on?

A. Well, another conference I had was with my attorneys, and at that time, I believe, in the District Attorney's office, at that time Tobin was supposed to have been present but he didn't show up; and the conference was arranged with Reeb being present and I offered this same evidence as before.

By Mr. Manion: What did you say and what did Mr. Reeb say to you?

By Mr. Struett:

Q. What was said at that time?

A. I said to him that "We have our statements here, that everything in those statements is correct, that we are offering this evidence."

Q. I show you Defendant's Exhibits Nos. 19 and 20 marked for identification and ask you whether or not those are the statements you refer to?

A. These are the statements we offered to the agents present, and particularly Mr. Clena said he was not interested because we could not prove or he said that I could not prove or produce a witness who saw me passing money. Therefore he said he was not

interested in the statements, he was satisfied with the evidence they had.

752 Q. And then what was done with those documents?

A. Then Mr. Reeb agreed to take them.

Q. They were left there with Mr. Reeb, is that correct?

A. That is right.

Q. Now, then, did you have another conference in the office of the United States Attorney with your attorneys?

A. We had a conference after this one when we prepared our—I think our statement was prepared, net worth, and these documents were available here. Reeb already had these copies, and my accountant had our records with our accountant being over there, submitted them, all of the records.

Q. Now, I show you Government's Exhibits Nos. 42 and 41 marked for identification; is that a photostatic copy?

A. That is a photostatic copy of part of the records.

Q. That you delivered to Mr. Reeb?

A. That is correct.

Q. You and Mr. Hauptman and Mr. Rieger delivered to Mr. Reeb?

753 A. That is correct.

Q. At that time did you also deliver to him photostatic copy of this document?

A. Photostatic copy of this, also delivered.

Q. Now, did you also at that time, or did you deliver to him or to Mr. Reeb at that time, any other additional documents?

A. Well, he had the statements already, I think Mr. Hauptman delivered the net worth statement, isn't it?

By Mr. Manion: I object to his using the word "think"; did he or did he not deliver the net worth statement?

By Mr. Struett: He did not.

By Mr. Manion: He did not. Let's have the record clear on this. I have never seen the net worth statement.

By the Court: What is the fact?

By Mr. Manion: What is the fact, just for the record.

By the Court: Bring it out.

By Mr. Struett: What?

By the Court: I want to know what the fact is.

754 By Mr. Struett: You want me to say it before the jury? I will tell you.

By the Court: No, I want you to ask the witness.

By Mr. Struett:

Q. What is the fact as to the net worth statement, Mr. Marzec, if you remember?

A. Well, he prepared a statement showing my assets and liabilities.

By the Court: What did you do with it?

By the Witness: Well, he had it in his possession.

By the Court: Who?

By the Witness: Our accountant.

By the Court: That is the last you saw of it?

By the Witness: That is right. It was prepared.

By the Court: You don't know what he did with it?

By the Witness: I don't recollect now, no.

By Mr. Struett:

Q. Now, were there any other documents delivered

755 to the Government at that time, to the best of your recollection?

A. Well, that I don't recollect anything else right now.

Q. Was any mention made of checks, or your personal checks?

A. That, also, the accountant had those checks with him.

Q. Were those delivered to the Government?

A. I believe so, that the accountant had them with him when we went over to the District Attorney's office.

By Mr. Manion: I object to it unless he knows of his own knowledge.

By the Court: Strike it out.

Mr. Witness, don't tell us anything except what you know. If you don't know, tell us; if you do know, tell us.

By Mr. Struett:

Q. Do you remember whether or not those checks were delivered?

A. That is right, the checks were delivered.

756 By Mr. Manion: Which checks, Mr. Struett?

By the Witness: Cancelled checks.

By Mr. Struett:

Q. Do you remember which checks were delivered?

A. Cancelled checks for '49 and '50.

Q. Now, prior thereto, prior thereto had you appeared before the Grand Jury?

A. At the Grand Jury, yes, I was called in.

Q. And you testified?

A. That is right.

By Mr. Struett: I think that is all.

Recross Examination by Mr. Manion.

Q. Mr. Marzec, did you or did you not voluntarily appear before the Grand Jury in 1955?

A. Well, I don't know whether it was willingly or not.

Q. Isn't it a fact you instructed your attorney?

A. My attorney told me I would be a witness at the Grand Jury, so I went in.

757 By Mr. Manion: Your Honor, at this time I ask leave of the Court to open the Grand Jury transcript of the testimony of Mr. Marzec.

By the Court: Very well.

By Mr. Manion:

Q. Mr. Marzec, isn't it a fact that before you appeared and testified before the Grand Jury you were advised by

Mr. Reeb of your Constitutional rights and were informed that you did not have to say anything that would tend to incriminate you in any fashion?

A. That is correct.

Q. That is a fact, is it not?

A. That is right.

Q. And you were told that you were under investigation at that time and an indictment against yourself for income tax violations might very well be returned by that Grand Jury?

A. That is right.

Q. Isn't that so?

A. That is right.

Q. Now, were these questions asked of you by Mr. Reeb before the March, 1955, Federal Grand Jury 758 and did you make these answers on or about March 11, 1955:

"Q. Now do you understand that you don't have to answer any questions that might incriminate you?

"A. That is correct, yes.

"Q. Are you represented by counsel?

"A. Yes.

"Q. In these matters?

"A. Yes.

"Q. And has your attorney advised you?

"A. That is right, advised me to testify."

Were you asked those questions and did you make those answers?

A. That is correct.

Q. Now, you told Mr. Struett, Mr. Marzec, that these documents, Government's Exhibits 41 and 42 for identification, were prepared from original mortgage records delivered by you to Mr. Osheroff.

Just exactly what original mortgage records did you ever deliver to Mr. Osheroff?

A. When he come to the office of the Polish Roman to examine records there, he wanted the list of loans,
759 mortgages made by that organization, and Brandt called me in, he said, "Have you got it?"

I said, "Yes."

So I gave him that original list.

He had photostats made and returned the original list, and I used that as a basis to prepare this.

760 By Mr. Manion: Would you mark these Government's Exhibits 43, 44 and 45 for identification, please, Mr. Reporter?

(Thereupon said documents were marked respectively Government's Exhibits 43, 44 and 45 for identification.)

By Mr. Manion:

Q. Mr. Marzec, I show you three records marked as Government's Exhibits 43, 44 and 45 for identification and ask you if you could tell the Court and jury what those records are?

A. These are the records kept by the secretary to the treasurer of all the loans and applications that were expedited or rejected.

Q. It is a record of all applications for mortgage loans made of the P. R. C. U., isn't that the fact?

A. Kept by the secretary.

Q. Is it or is it not?

A. Yes.

Q. They were kept by yourself as well, weren't they?

A. No, the secretary, except when she was on a vacation.

761 Q. Oh, then you have kept them yourself to some extent?

A. To some extent when she was gone for a vacation, a certain few items.

Q. These are the records that record every application for loans received, isn't that true?

A. That is right.

Q. They indicate whether the loan is accepted or rejected?

A. That is right.

Q. Now, do these records in any part of them show any of the information which you have listed on Government's Exhibits 42 and 41, being the schedules you prepared for the years 1949 and 1950?

A. This record was not taken from there.

Q. Where was it taken from?

A. From a list of loans that was kept by me and from this list I made reports every month.

Q. Where is that list?

A. The list was submitted to Osheroff and he has got a photostat of it and it was returned then back to the office.

Q. What does the list look like?

762 A. If I can go in there and look at it, I can show you.

By Mr. Manion: I have no objection your Honor. Step down, Mr. Marzec.

(Whereupon the witness left the witness stand, and then returned.)

By the Witness:

A. This is the list that I used and I kept records in the organization when I was employed, and from this list I also used submitting the amount of loans made during the month, and there was a photostat made of that and I kept the original.

By Mr. Manion:

Q. Just a minute, Mr. Marzec, I didn't ask you for anything.

By Mr. Manion: Will you mark this Government's Exhibit 46 for identification, please, Mr. Reporter?

(Thereupon said document was marked Government's Exhibit 46 for identification.)

By Mr. Manion:

Q. Now, does Government's Exhibit 46 for identi-
763 fication, consisting of eight sheets stapled together, is that the original mortgage records from which you prepared the photostatic documents, Government's Exhibits 41 and 42 for identification?

Yes or no, Mr. Marzec.

A. Yes, that was prepared from this.

By the Court: That was prepared from this, what is "that" and what is "this"?

By Mr. Manion: Meaning the Government's Exhibit 46 for identification was prepared from Government's Exhibits 41 and 42 for identification.

By Mr. Manion:

Q. Is that correct?

A. That is correct.

Q. Now, do you tell me that Government's Exhibit 46 for identification is a part of the mortgage records of the Polish Roman Catholic Union?

A. This is a record of commissions paid to all the brokers, and this was kept by me for the organization at that time.

Q. Under whose direction, who invited you to keep that record, Mr. Marzec?

A. As a part of the business, this was kept.

764 Q. Who told you to keep such a record as this?

A. As an accountant it was my business to see that it was kept.

Q. Who told you to keep it?

A. For information for the officers, the officers come and go and I am there, so I have to keep these things.

Q. Now, what does this document, Government's Exhibit 46 for identification, would you tell us as a part of the records of the P. R. C. U., what information does this list contain that is not contained in greater detail—

A. It contains—

Q. Wait a minute. (Continuing)—in the three loan records, Government's Exhibits 43, 44 and 45 for identification?

A. This is the loan record and this indicates—

Q. Just a minute, Mr. Marzec. I have asked you a specific question. I would like an answer to that question.

A. What is the question?

Q. What information is contained in your so-called list of mortgage records, Government's Exhibit 46 for identification, what information is there in the docu-
765 ment which does not appear in greater detail in Government's Exhibits 43, 44 and 45 for identification?

A. Well, this is in full detail, these records, the secretary's records.

Q. I asked you if there is any information in Government's Exhibit 46 for identification which is not recorded elsewhere in the official records of the Polish Roman Catholic Union?

A. Of this (indicating)?

Q. Yes, sir.

A. The amount of commissions paid for to the brokers, this is the figures taken (indicating).

Q. This shows the amount of commissions paid to the brokers?

A. That is right.

Q. "This" referring to Government's Exhibit 46 for identification. This is a list of the finders' fees, is that correct?

A. That is correct, yes.

Q. And you mean to tell me there is no other record of finders' fees payments in the records of the Polish Roman Catholic Union outside of this document, Government's Exhibit 46 for identification?

766 A. Besides the original checks that are entered into the disbursements there by the other clerks.

Q. How did this document come into your possession, Mr. Marzec, Government's Exhibit 46 for identification?

A. That is when I made the copies—I took this document—prepared these others, I was employed at that time until 1954 in the organization.

767 Q. And in whose department is this record kept, is this part of the records of the Auditor's Department, Treasurer's Department, or whose?

A. That was my record in the Auditor's Department.

Q. Is it a part of the Auditor's records, yes or no?

A. It wouldn't be a complete record.

Q. Is it a part of the Auditor's official records kept by the Auditor of the P.R.C.U.?

A. As an employee, I had these records to help me out in preparing whatever I had to prepare.

Q. In other words, Government's Exhibit 46 for identification is your own record, isn't that a fact?

A. It might be mine and the company's, the same.

Q. Well, is this the auditor's record?

A. Not completely, no.

Q. Now, Mr. Marzec, is Government's Exhibit 46 for identification, together with Defendant's exhibits—where are the original blue sheets? —together with Defend-

768 ant's Exhibits 34 through 42 for identification, the documents from which you obtained the information appearing in the two schedules you submitted to the United States Attorney in 1955 marked Government's Exhibits 41 and 42 for identification?

A. These are originals and that is prepared from these (indicating).

By the Court: "That is prepared from these", that doesn't mean anything in the record.

By Mr. Manion:

Q. Which are the originals, use the identification numbers.

A. The originals would be Exhibit 42 and 46.

Q. In other words, you are saying Defendant's Exhibits 34 to 42, inclusive, and Government's Exhibit 46 are original records kept by you, is that right?

A. That is my information.

Q. And Government's Exhibits 41 and 42 for identification are records subsequently prepared by you?

A. That is right.

769 Q. From Defendant's Exhibits 34 to 42 and from Government's Exhibit 46 for identification, is that correct?

A. Yes.

Q. All right, Mr. Marzec.

Now, tell me where, in either Defendant's Exhibits 34 to 42, or in Government's Exhibit 46 for identification, the payment of $150.00 to Stanley Kusper in 1949 is connected with a mortgage loan made by Miller at 4426 South Racine Avenue is recorded?

By Mr. Struett: Your Honor, I object to that. I will tell you why I object to that.

He said he didn't have all of his records, that these were part, these blue slips were not all of the records covering these loans. He testified to that yesterday.

Now, obviously, every one of these aren't on there.

By the Court: Objection overruled.

By Mr. Struett: And that is not proper cross examination.

770 By the Court: Objection overruled.

By Mr. Manion:

Q. Where is that sum recorded?

A. $150.00, commission paid to Miller, may I see that?

Q. Yes, you can see it. It is the first entry appearing on the first page.

A. $150.00 is commission, that is finder's fee paid to Max Miller, the distribution of the commission was one point Miller got—no, I mean Kusper here got $150.00.

Q. Just a minute, I asked you where the payment of $150.00 to Mr. Kusper is recorded in Government's Exhibit 46 for identification; I didn't want an interpolation.

A. It is not recorded in this exhibit.

Q. It is not recorded in there, that is the fact, isn't it?

All right. I will ask you another one.

Referring to Government's Exhibit 41 for identification, will you tell me where, in either Government's Exhibit 46 for identification, or Defendant's Exhibits 34 through
771 42 for identification, the payment or the retention of $333.00 by yourself in connection with a loan made by Mr. Banach during the year 1949 at 8121 Drexel Avenue is recorded?

A. It is not recorded in here. This is my record.

Q. It is not recorded anywhere in those documents, is that right?

A. Miller's would be recorded in my other book.

Q. I am talking about the payment to Mr. Kusper.

A. No, that there—there was no—

Q. They are not recorded in these records at all?

A. There was no record kept, individual record with any broker.

Q. The truth of the matter is you reconstructed these documents in 1955 from a presentation of the Government, didn't you?

A. I prepared those from the records I had available.

Q. And you had no records available which showed

amounts retained by you, paid to Kusper, Sobieraj, or Brandt, isn't that the fact?

772 A. Besides whatever evidence we already submitted.

Q. Being the checks which you paid to Mr. Kusper, Repsuk, Sobieraj and Stanczewski and Company?

A. And the additional documents I had in my possession.

Q. Oh, yes, what were those additional documents, Mr. Marzec?

A. As we have stated before, we had submitted them before.

Q. Well, let's state them right now. Here they are.

By Mr. Struett: You got the marked ones. Let's keep them separate so we don't get them mixed up.

By Mr. Manion:

Q. I show you two documents marked as Defendant's Exhibits 19 and 20 for identification, and ask you if those documents represent substantially all of the rest of the information or documents you furnished to the United States Attorney in this matter?

A. Not in detail, no.

773 Q. What other documents did you furnish to the United States Attorney, Mr. Marzec?

A. Oh, we submitted them a statement we had.

Q. Let's enumerate the documents first. What other documents did you ever furnish to the United States Attorney?

A. The original of this document here (indicating). This document Exhibit 46 was already in the possession of the Department.

Q. We talked about that document—now we talked about 34 through 42.

A. This exhibit here, 42, was submitted. The statements were submitted.

Q. That would be Defendant's Exhibits 19 and 20 for identification?

A. That is correct.

Q. Now, what other documents did you ever furnish the United States Attorney?

A. The distribution sheet that you saw there.

Q. What distribution sheet?

A. The one we just talked about.

Q. Do you have a distribution sheet, Mr. Struett?

By Mr. Struett: You have got it right there.

774 By Mr. Manion:

Q. You are referring to these documents, Government's Exhibits 41 and 42 for identification?

A. That is right.

Q. Well, I want to be sure we get all of the things you gave us here, Mr. Marzec.

Now, what else did you give us?

A. Cancelled checks.

Q. Did you give us any cancelled checks other than the cancelled checks for your payment to Sobieraj, Kusper and Repsuk?

A. I think those were all in there, all the cancelled checks. That is my recollection.

Q. Did you give us any cancelled checks which showed payments by you to persons other than yourself during the years 1949 and 1950 which payments had not been already claimed by you in your tax returns for those years?

A. Other persons besides those, I believe all of the checks were submitted.

Q. Did you submit any checks to us which would tend to prove the payment of commissions by yourself to others in excess of the commission payments by

775 yourself claimed in your tax return?

A Not in excess, no.

776 Q. As a matter of fact, the Government at no time has challenged the accuracy of the commission payments paid by you in the tax returns, have they?

A. No, they have not.

Q. Mr. Marzec, in Government's Exhibits, or Defendant's Exhibits 19 and 20, are those documents under oath, either one of them?

A. I think it is court reporter reports.

Q. Were you given an oath before preparing either of Defendant's Exhibits 19 or 20?

A. No, I was not.

Q. Did you sign either Defendant's Exhibits 19 or 20?

Mr. Marzec, I show you the originals of Defendant's Exhibits 19 and 20 for identification, and I again ask you if you signed either of those two documents?

A. No; the documents are not signed.

Q. Have you at any time, either in your statements as contained in Defendant's Exhibits 19 and 20 for identification, or in any other records, given to the United States Attorney at any time any evidence to verify or corroborate any of the amounts which you claim
777 you paid to others, namely, Kusper, Sobieraj and Brandt, as set forth in Government's Exhibits 41 and 42, for identification?

A. Not in total amounts.

Q. In detail, have you given us anything to corroborate those figures?

A. Not in total amounts, but we did give the distribution and the percentage.

Q. And the percentages you received varied from time to time, didn't they?

A. Generally it was one per cent.

Q. That is what you received from the brokers?

A. No, that is what I paid out.

Q. You received from three to six per cent, didn't you?

A. Well, three or four per cent, or five.

Q. Didn't you receive six per cent from Mr. Banach at one time?

A. That is one time.

Q. So you did receive six per cent on some occasions?

A. Yes.

Q. You received five percent on a number of 778 occasions from Mr. Miller, didn't you?

A. That is correct.

Q. And you tell us generally you paid out certain percentages to certain people?

A. I paid out, yes.

Q. But you have no records to establish that?

A. This is the record I kept. That was available and the rest of them disappeared, or I lost them. I kept them so long, and then I got rid of them.

Q. You did at one time have specific records showing dollars and cents?

A. I had this, and I kept this.

Q. And by "this" you are referring to Government's Exhibits 34 through 42, for identification?

A. That is right.

Q. Those records don't record a single dollar amount of commission payments to anyone, do they?

A. They record the amount of the loans.

Q. Answer my question, if you please?

A. Not dollars and cents, no.

Q. Mr. Marzec, you testified regarding a conver- 779 sation had with Mr. Reeb, I believe, in November, November 8, 1954, in the United States Attorney's office.

Do you remember that conversation?

A. November 8th?

Q. 1954. You said you had a conference meeting with Mr. Tobin, and Mr. Tobin wasn't there, and Mr. Reeb attended; do you remember that?

A. I don't recall exactly it was November 8th. Who was all present there?

Q. Mr. Freiberger, do you remember him?

A. Yes.

Q. And Mr. Clena?

A. Yes.

Q. Mr. Wolfe and Mr. Rieger?

A. That is right.

Q. And yourself?

A. That is correct.

Q. Isn't it a fact that that is the conference, isn't it, at which you offered the originals of Defendant's Exhibits 19 and 20 for identification?

A. That is correct.

Q. To the United States Attorney?

A. That is correct.

780 Q. And isn't it a fact that Mr. Clena made it very clear to you and your attorney at that time that the Government was not interested in receiving these documents unless it was understood that there was no promise of immunity or any special consideration to be given you in exchange for those documents?

A. Not that I can recollect.

Q. You don't recall him saying it?

A. Not that I can recollect.

Q. Would you say he did not say it?

A. I would.

781 Q. Would you say he didn't say such a thing to you?

A. I would say he didn't say that.

Q. Mr. Marzec, isn't it a fact that at that same conference, Mr. Reeb told you that he considered Defendant's Exhibits 19 and 20 for identification, as a deathbed confession on your part?

A. No.

Q. He did not?

A. No.

Q. You deny that he said that?

A. That is right. He said he would take the documents and examine them.

Q. Didn't he tell you, as a matter of fact, he promised to read them, and that was all?

A. I don't say he did say that. He said he would read those.

Q. Didn't he say clearly that was all, that he would read them?

A. Not that.

Q. Did he say there would be any special consideration given to you in exchange for the original documents, Defendant's Exhibits 19 and 20?

782 A. I didn't have that conversation with him.

Q. What conversation?

A. That he would give it any consideration.

Q. Do you deny that he told you he considered these to be a deathbed confession?

A. Yes, sir.

Q. You deny that?

A. That is right.

Q. Did Mr. Reeb at any time tell you that he considered your statements to the United States Attorney to be a deathbed confession?

A. I don't recollect having any direct conferences with him after this conference here.

Q. You talked to him briefly before you went to the Grand Jury in 1955, didn't you?

A. That is right.

Q. And you were asked a stated list of questions at that time, which had been previously submitted to and agreed upon by your attorney, isn't that the fact?

A. That is what I understand.

Q. And Mr. Rieger advised you of the questions that were going to be asked by Mr. Reeb, and he told you to answer those questions?

783 A. That is correct.

Q. Has anybody, Mr. Marzec, at any time in connection with the United States, ever made you any offer or inducement to receive any of these documents, and that would be Defendant's Exhibits 34 through 42, for identification, Defendant's Exhibits 19 and 20 for identification, the cancelled checks that you referred to, Government's Exhibit 46 for identification or Government's Exhibits 41 or 42 for identification, or any other documents you have delivered to the United States Attorney or the Internal Revenue Service? Have you ever been made any offer or inducement in connection with any of those documents to gain that information from you?

A. My attorney handled all those matters.

Q. Answer my question. Has any such offer or inducement ever been made to you?

A. Directly to me?

Q. Yes, sir.

A. No, not directly to me.

Q. By anyone in connection with the Government?

A. Not directly to me.

Q. Isn't it a matter of fact these documents do 784 constitute a deathbed confession?

A. I wouldn't know.

By Mr. Manion: I have no further questions of this witness, your Honor.

By Mr. Struett: May I see that Grand Jury testimony?

By Mr. Manion: Certainly.

(Mr. Manion handed document to Mr. Struett.)

By Mr. Struett: Mark this as Defendant's Exhibit No. 44 for identification, that being pages 578, 579, 580, 581 to 584, and Mr. Manion, we can agree that it is only testimony before the Grand Jury?

By Mr. Manion: Yes.

(Thereupon said document was marked Defendant's Exhibit 44 for identification.)

By Mr. Struett: And that it took place just exactly as it appears here?

By Mr. Manion: That is right.

By Mr. Struett: All right. If your Honor please, if I could have a recess. I am not going to ask about this.
785 I am just going to offer it as an exhibit here to save time.

By the Court: Offer it.

By Mr. Struett: I will offer it in evidence.

By the Court: Any objection?

786 By Mr. Manion: Yes, we object to it. I don't think it is material to the case. There are statements made by Mr. Marzec here that have not been asked him on direct examination by Mr. Struett. I don't think this is the proper way to put such a statement into the record. If Mr. Marzec wants to give such testimony, Mr. Struett should interrogate him.

By Mr. Struett: I will go right through it, then.

By Mr. Manion: You don't have to go through that, Mr. Struett. Ask him the questions, unless you are impeaching your own witness.

By Mr. Struett: I move to declare a mistrial and the withdrawal of a juror. That is an irresponsible statement.

By the Court: Motion denied.

1

IN THE UNITED STATES DISTRICT COURT

* * (Caption—No. 55 CR 679

Chicago, Illinois,
Wednesday, February 13, 1957,
100:00 o'clock a.m.

Court convened pursuant to adjournment.

Present:

Mr. Manion
Mr. Struett

And thereupon the following further proceedings were had herein:—

By the Clerk: No. 55 CR 679, the case on trial.

* * *

2 By the Court: Bring in the jury.

I want to instruct this jury before lunch so you better have all the instructions ready.

(Thereupon the following proceedings were had in open court in the presence and hearing of the jury:)

And thereupon Mr. Struett addressed the Court and Jury in argument on behalf of the defendant, as follows:

By Mr. Struett: May it please the Court, ladies and gentlemen:

I want to thank you for the attention you gave this case. There are always two sides to a story. There is always a little good in everybody.

Now you can't fool everybody all the time. I want you to take these facts as I give them to you. I give them to you to the best of my ability and I try to give them to you fairly, honestly and forthrightly.

Now when you go into the jury room, you are going to have an indictment before you, and it is going to — as you

can see, there are two counts against Mr. Brandt,
3 there are two counts against Mr. Sobieraj and there
are two counts against Mr. Kusper. And at the end
is the defendant who is at the bar of justice.

And those counts are of practically identical effect in that they set forth that these people were in a joint venture, and out of it they realized certain sums of unreported income, each and all of them.

Now those are generally the charges, that they didn't report them.

Now you heard a lot of talk about Mr. Marzec hasn't told us how much he paid each one, this cash. Where did they get the information from their indictment if they didn't get it from Mr. Marzec who also could tell them how much cash they paid?

He gave us nothing. He did nothing. He is concealing, and then they come up with an indictment charging each and all of these people. Where else in this case could the Government find out what cash was paid except through Mr. Marzec?

And they tell you, and they would try to have you
4 believe that Mr. Marzec gave nothing, he lied to them;
and what-not.

My gracious, on the day that indictment was returned, they had their arms around Mr. Marzec—

By Mr. Manion: I object to that, your Honor.

By the Court: Sustained.

By Mr. Struett: Now, that is the situation in this case. Who else could tell them that?

They tell you that they allowed him nothing because Brother Worcester went on and examined his books, went out. Did they expect to find the cash in Mr. Kusper's books? Of course they didn't.

Now what is your basic background of this case.

Now again on this joint venture, who are the parties?

You have heard the evidence. I am not going to rehash it for you. You people are intelligent.

They put Mr. — pardon me. I am terrible on names — what is the name of that — Kobylinski?

By Mr. Manion: Kobylinski.

By Mr. Struett: — Kobylinski who was Mr. Marzec's boss. He told you what Mr. Marzec did. I didn't tell you. Don't take my word for it, take the Government's own witness.

He had a little desk with seven other people in an open room, and you know how much those commissions were that he collected in those two years according to the Government's own story. They were $64,000,00 in one year, and they were $88,000.00 in another.

Mr. Manion tells you that Mr. Marzec had the power and the authority and the right to control and to go out and tell these brokers that they had to pay him that commission.

Now that just isn't this case in any sense of the word, people.

Brandt was the treasurer. He approved the loans.

Sobieraj was the appraiser. They had to have an independent appraiser to get that loan through. And Kusper was the attorney that handled the legal details, and Marzec, the little fellow working on the desk back there in that office, is the man that went out to these brokers and said, "You pay me," and Marzec dictated to Mr. Brandt, to Mr. Kusper, and to Mr. Sobieraj, "I will give you this and I will give you that of that."

Now we are not that — one of you gentlemen, I forget which it was, was a real estate broker. I mean, you know those things, those are just human, common facts of life.

This man was out there as an employee and he was told to go with them. They were in the background and he was out in the front. And they tell you that the Government never tried to get all of this money from Mr. Marzec.

You heard Mr. Riewer. They not only want to soak him with a criminal liability for this whole thing but with a civil liability equally.

By Mr. Manion: I object to that.

By the Court: Sustained.

By Mr. Struett: Now let's take this thing and let's look at it.

There isn't any question in this case and never has been that Mr. Marzec is guilty in the sense that he failed to report his income in the years in question in the amounts he should have at the time he should have.

I couldn't argue conscientiously to you people otherwise. He has told the Government that and he has admitted it to me and I am not going to deceive you.

But you have got — thank gracious — that under our American system of life he has a right to have his peers, a jury of American citizens, taxpayers, determine under all of the facts in this case whether he was guilty of the crime charged in the indictment.

Now that is his constitutional right.

You are the judges of the facts as governed by the instructions of the Court. You have got the right to say whether all of the facts and circumstances that this Court has admitted in evidence — whether under them this man should be found guilty here. That is a great prerogative and it is a great responsibility and it is a great thing in our American system of life that we do not have people convicted upon the administrative edict of a revenue agent or upon the action of a United States Attorney.

You people are the judges of the facts.

Now let's take this matter another way. You have heard about an investigation. They have told you about their investigation. What investigation did they make here?

8 They went out and looked at Marzec's books. They went out and got these brokers' lists and then they went to see these brokers.

Now what information did the Government have as a result of that?

They had here the following information: They knew that Marzec had got $64,000.00 in one year, $88,000.00 on the second. They knew his status in this business. They knew that he was only a collector. Mr. Miller testified to that.

He testified to that fact.

They knew Mr. Brandt had turned down a check when we wanted to give him a check and he wanted cash.

They knew that Mr. Sobieraj and Mr. Kusper were sharing in these commissions. They knew all that. They knew the whole background of this case.

In addition to that, they talked to these brokers. They knew that when Mr. Milton came in there, he was required to deposit in escrow this first commission, the first deal he had with them. And on the back of it appears the

9 endorsement of Mr. Kusper.

You heard Mr. Miller's testimony about Mr. Kusper wouldn't go through with the deal unless he got a part in the building.

They knew Kusper was sharing these commissions by way of the Repsuk checks, and by way of the Kusper checks.

And they knew that Mr. Sobieraj was sharing in these commissions by way of the Sobieraj checks and by way of the Stanczewski checks.

Now to me an investigation is an attempt to arrive at the true facts, and when they are all through, this case was all bundled up to prosecute only Marzec, with affidavits in the file that these other people will receive the — had received thing.

Now, let's look at the other side of this thing. That is the story there. What about this investigation?

You heard Mr. Osheroff testify under oath that the first thing he went out there, I think it was September 26th or 27th. The next day Mr. Wilson called him. Mr. Marzec never employed Mr. Wilson for several months, at least a month or two thereafter. So somebody had an accountant representing Mr. Marzec before he ever met the accountant or knew him.

Now that is undisputed in this record, people.

Now you know what happened in this investigation. I am not going to burden you to any great extent. What one act, what one defense, what one effort did neither Mr. Richardson or Mr. Wilson make for this man in the early stages of this investigation?

Have you got those letters, the Banach letters?

He would infer that Mr. Marzec lied to him and told him there were no other commissions. Mr. Marzec says he told both Richardson and the other chap the facts.

Now you have got in evidence here a letter from Louis Samuels & Company dated February 28, 1951; and you have got in evidence here as part of the Government's case a letter from Mr. Wilson to Mr. Banach:

> "Enclosed you will find a form 1099 issued to Joseph Marzec. We are at a loss to understand the receipt of this form inasmuch as Mr. Marzec denies having any business dealings with you and could not have paid this amount of money for salaries, commissions or any other type of compensation."

Right back comes a letter, and I read it to you the other day, that there couldn't be any question of Wilson's knowledge that Marzec was getting these commissions and sharing these commissions.

And the next thing, what do they do? They take him in before the Intelligence Unit. I have offered that in evidence, the Government did not. Where they have him in effect deny the receipt of these commissions and have him say that he has no other income.

Now he has told you his story, why he did it. They say, "Oh, he is the guiltiest man in the world."

He denied it afterward. They harangued him here for hours yesterday. He has told you why he did it. Not only is that true, but this goes much further.

They come in here and say that they had another conference with him when he and Wilson were there and they asked him whether he was sharing any of these commissions.

Have they got a shred of paper that would show that they had that conference?

Mr. Marzec has testified they never asked him whether or not he shared those commissions with everybody. Not a shred of paper have they got to substantiate their story that they asked him.

Now I will take the story either way, that they never asked him or they did ask him.

I will ask you good people, twelve and true, what justification is there in this record, in this investigation for these three affidavits of these other people? I got one of them, I will show it to you. Give me that Sobieraj affidavit.

By Mr. Manion: We object.

By Mr. Struett: They talked to him for ten days. Why was this affidavit obtained from Mr. Sobieraj, why? Answer me. Nobody can answer.

Why was this affidavit obtained?

There isn't a circumstance in evidence — they had no evidence that Marzec got any of this other additional
13 money, and if he refused to talk, why did they go out and get these affidavits from Sobieraj?

Now you answer that one. He can talk for six months and he cannot answer that.

And you heard the story Mr. Wolfe testified to. Mr. Wolfe testified that Mr. Wilson and Mr. Richardson came over there and wanted to settle the case.

It there a shred of authority in here that he had authority of Mr. Marzec to do that?

And all that is what they were telling him, they were going to settle the case. They had him do things he never should have done, ladies and gentlemen, and unfortunately he has admitted he was nothing but a dupe, he was protecting them, and all of the time they were down there knifing him in the back with their affidavit.

Now that is the story of this case.

Then you have some other factors involved. You have Mr. Wolfe testifying about the conferences he had over in Richardson's office in with Miller. What are they all over there together for, with a broker, an agent on this case, and Marzec's attorney together?

14 You can't answer that and he can't answer that.

By Mr. Manion: Who is this in this conference?

By Mr. Struett: Wolfe, Richardson and Miller discussing Marzec's case. You heard his testimony.

Now, why? For what reason? Give me that little black book, please.

15 You know they love Mr. Sobieraj now. He is the finest man. He just took what he could get from Mr. Marzec and everything else, and he produced a little black book here, and he swears on the witness stand that he and

his mother-in-law had a little partnership there, and that this was the book of the cash receipts of the partnership.

It is in her handwriting, and everything he had went in there, and that is all the money Mr. Marzec paid, and it is reflected in here, and he is a nice gentleman, and you want to contrast Mr. Marzec's conduct with Mr. Sobieraj's.

One or more of you people are accountants, and I am going to show you this book. I am going to do the best I can. Here are two entries. I start on January of 1949.

"Loan commission, Hollywood and Winthrop."

and above is

"one-half to B. S. $250.00; one-half to L. S."

and that is the mother-in-law's name, and at the end of the line is "$250.00".

16 In other words, that is not a partnership book at all. If it was a partnership book and there was $500.00 received, those of you who are familiar with accounting and bookkeeping, you would carry over the $500.00; you wouldn't just charge the half share. I will show it to you again.

Here is loan commission, Grenshaw and St. Louis, one-half B. S., and that is Mr. Sobieraj, and one-half, L. S. One-half B. S. $125.00, and one-half L. S. carries over here the one-half. It doesn't carry over the full $250.00 commission, but rather, carries over one-half of it, the half she received.

When they talk about the income there, one place in here he called your attention to the income, and that is what he told her. It might have been what he charged her.

One place in this book, as I recollect, and I have gone over it quite carefully, there they do carry the whole commission over, just one place, and they show a division below.

Maybe she took all of that for her share. Here is another one. I just pick them out at random. 1441
17 Market Street, B. S. $100.00, and L. S. — and that is the mother-in-law — over here is one hundred. The commission obviously is $200.00.

If this were a partnership book, the $200.00 would be carried over in the righthand corner. Here is a $300.00 loan commission. This is Marzec's — $300.00 — one-half B. S. and one-half L. S. — Marzec, check, $150.00.

That is her book, and it never was his book at all, and he comes in here, the nice lovable character, who was so strongly vouched for, and says, "This is the book kept in the regular course of business."

In addition to that, falks, he testified this contained all the commissions that he received in the margin. There is one check for $400.00, all in evidence, one check for $375.00, one check for $700.00, one check for $660.00, and one check for $450.00. How much is that? That is $2,000.00. They are not in there.

He is cheating on his own mother-in-law.

He is a good guy, and he told you how good he is, what a wonderful man he is, how honest he is.

18 They have some documents here, and I want to call your attention to them. They gave him credit for it here on this. What does that have to do with what I offer it for? Nothing.

You can't fool all the people all the time. They gave him credit for it on some other sheets. The fact it is their own nice fellow — Sobieraj would cheat his own mother-in-law and would come in and lie to you and tell you he had a book and it wasn't his book at all, and he didn't put all the things in.

They can give him credit here and there and everywhere, but the fact remains that Sobieraj lied to you about the little black book. Isn't that true?

You can't escape that proposition. There isn't anybody here that can tell you otherwise.

Where are those schedules that Mr. Worcester prepared?

By Mr. Manion: Right here.

By Mr. Struett: They have a lot of expert testimony here about what the amount of this money is. I have been in this game a little bit, and if they can tell you today how much unreported income on this record Marzec has, they are better than I am, and I am going to show it to you now. Pardon me a second.

They have the worst screwed up figures here that anybody could possibly prepare, and as far as I am concerned, the only one that would attempt to prepare such exhibits is a man, a Revenue agent with eight or ten years of experience, who would go out to Kusper's books and expect to have the cash showing in the books.

You have certain figures in your indictment that they said each one of these people received. They must have had some evidence to support that.

Then they come down here, and they have some of Marzec's records here. Anyhow, when they get all through with this thing, Mr. Brandt says that he obtained just about the amounts Mr. Marzec said he had paid him.

They have turned that around and have said they checked with Brandt and everything else. The probability is that Mr. Brandt had readily admitted the truth now, not like Mr. Sobieraj, and his figures are practically dollar for dollar.

Marzec, according to his records, it shows $17,900.00, and that is what they both agree on. Do you think Marzec is agreeing on one of these and telling a lie on the other?

Then they got to their good friend of recent times, Mr. Sobieraj. They say now that Brother Worcester here with the little black book has found that Sobieraj only got

$7,848.00. I think that is the figure here, and if I am wrong, you correct me.

I read an indictment in this case which charges $14,897.13, and Sobieraj pleaded guilty to that count that he got that money. I can't figure it out, folks.

A fellow pleads guilty to $14,000.00, and Brother Worcester says seven.

In addition to that, we get to Brother Kusper. I have covered him a little bit. What do they come up with with Kusper? They say Kusper got none of this money. Yet they indict him.

21 You have heard the testimony. Do you think Kusper would ever let that check get out of his hands if he didn't get a cut in it? You people are just twelve people good and true. Do you think Kusper would ever let that check get out of his hands? He got nothing?

He is just the nicest fellow in the world. They went out there and looked at his books, and they took his word that he didn't get any of this money. They took the other's word, too. It wasn't quite exactly right.

According to their figures, Mr. Marzec, as I gather them — and I have tried to reconcile them — but here is their story from Brother Worcester. You people rationalize it if you can. You have heard the testimony. I am not going to repeat it.

According to Brother Worcester here, Marzec is charged with $28,000.00 of these unreported commissions in 1949, and all the others are charged with $25,000.00.

In other words, the little fellow in the little desk in the little room with seven other people doing clerical

22 work, according to him, he got $28,000.00, and the treasurer, the appraiser and the others got twenty-five thousand. That is nonsense.

Don't take my figures. Don't take my word for anything.

In 1950 on their own figures, here is the story: Worcester charged Marzec with $21,676.00 and the others with $38,000.00, nearly twice as much. The next year they get a bigger cut. You know figures don't lie, but you can lie with figures, and you can move figures around here so you don't know what on earth the figures are.

In other words, you have heard the testimony. You have heard basically, without going into it, that there was four per cent, one-quarter to Marzec, one-quarter to Brandt, one-quarter to Kusper, one to Sobieraj.

Brandt corroborates Sobieraj — I mean Marzec. Sobieraj, with the benefit of his little black book wants to wiggle out of a half and Brother Kusper wants to wiggle out of all of it.

You heard the little girl here under subpoena — and they didn't bring her in, and they try to tell you that they
23 have another case pending. Sure, they have Kusper, but is there any stronger evidence of the fact she could prove, give evidence against Kusper from their own admissions? Then they can't find any evidence about Kusper from any part of this money — none.

Now, let me have that amended return. If I could have about five minutes recess, Judge, I would appreciate it. It will only take me ten more minutes to close.

By the Court: Then you can close?

By Mr. Struett: I will close in about ten minutes.

By the Court: Take a short recess, ladies and gentlemen.

(Thereupon a short recess was taken.)

By Mr. Struett: This man, as I told you, had no one by the name of Richard. They picked the lawyer for him. He went in there and told — followed their instructions and denied that he got these commissions, denied it to the agents after discussing with his lawyers, and then they

take him in his lawyer's office, and he again denies it, and the lawyer he is supposed to have says, "If you got
24 those checks you are hooked and you are on your way to the penitentiary."

How would any of you people in the trouble this man was in like to have that representation, one telling the Government people that he is on the way to the penitentiary, and the other telling him the guy was in effect lying and wouldn't tell him the truth and wanted to get out of the case, and all the time while this was going on, they were telling this individual that they were going to settle it for him?

By Mr. Manion: Who told him that?

By Mr. Struett: Mr. Brandt and Mr. Miller. He testified to it.

By Mr. Manion: By "they," you mean who?

By Mr. Struett: If one told him, they all told him.

By Mr. Manion: Who?

By Mr. Struett: Mr. Brandt told him, Mr. Miller told him, and that in my opinion is binding. I have a right to argue that, and I think that is the law.

Then what happens? When Richardson gets through with him over in Mr. King's office, my successor, Mr.
25 King, according to procedure, writes a letter telling him his case is on the way to justice. You heard Mr. Rieger. When did that letter appear in this case? Right exactly when Mr. Wilson was on the stand, and he pulled it out of his file, and he had no letter that he had ever sent Marzec on it. He thought he had talked to him, and you heard Marzec say that he didn't.

Now, then, I don't want to burden you too much. You heard it all day yesterday, but what did happen, then? He hired us. Is there any doubt in your mind that we went over there and gave them everything we had? Is

there any doubt in your mind about it? You have heard the evidence.

You have seen some of the stuff we gave them. We told them the whole story. Now they say we lied to them.

We had figures. We gave them everything we had, and they said — you heard them say that they told Mr. Struett that if we gave them that, it would be the death warrant of Mr. Marzec. Mr. Reeb was supposed to have said that.

26 You heard Mr. Reeb on the stand yesterday. Did you hear any such testimony from him? Of course you didn't. Do I look like a lawyer that would sign a death warrant for my client? Of course not.

They were as anxious to embrace Marzec in those days as they were to embrace Brother Sobieraj with a little black book and the checks today. They change every minute.

If they had this man so under wraps — and he was an employee—that he would go there and follow their instructions that he wasn't to admit this income, they had him equally under wraps that he couldn't report this income.

If he did, the whole party was out. You have a right to determine in the light of all the facts, and whether he wilfully and whether he deliberately did so is the question, and in addition to that, you have a right to take his whole story that this man has given you, that we have given you to the best of our ability here and given you what we have done here, and it was through us and through us alone that they brought these other defendants to the bar of justice, and he can talk for thirty-six hours

27 and he can't tell you otherwise, and then he turns on us, and that is your story.

One more thing. He talked about this amended return.

Let me see when the original was filed. What do you think? I am not going to tell you people here that we gave to the exact dollar. The witness was harangued on this exhibit, Government's Exhibits 34 to 42 inclusive —

By Mr. Manion: Defendant's.

By Mr. Struett: He said we had part of these, or rather, that he had part of these notes and didn't have the balance. That is what he testified to originally that they are original work sheets. They show buildings. They don't show loans. Don't misunderstand me — but they don't have to show loans, and he has in his own handwriting Bruno and Brandt. It shows some of them which didn't go. He knew what brokers and what buildings, and he knew the percentage that he was directed to give them.

You heard Sobieraj, "I just wanted a little bit and I took what the fellow gave me." Do you believe that? Of course you don't. He gave them the figures.

28 According to their figures, as I read them, they are giving him no credit for any amounts of money he paid to Kusper. Don't forget this; that any of this cash he picked up that he got in cash and he distributed, that is not taxable income to him if he is a conduit for those funds.

They gave him no credit for Kusper, and they would have you believe that Kusper got none of this.

They took Sobieraj's black book, and he pleads guilty to getting fourteen thousand in one year, and they only give us credit for seven, and to make a long story short, they get unreported income here of this man of approximately forty-odd thousand dollars, whatever the figure is here.

I can get it here in just a minute, but it is approximately that.

You have an amended return here. Here you have a 1950 return, and these are so complicated you can't even read them. When was this filed? On March 15, 1951, for the year of 1950, and you have an amended return filed on June 29, 1951. That is April, May, June — three months later.

They pick up $39,000.00 additional, approximately.
29 Three months later he had picked up and reported all of the money he received here.

Don't misunderstand me, and I am not misleading you, and he didn't report it in the right year, and he didn't report it as it should have been reported under the law.

I know that, but actually he has reported more money than he owes, and he has given them the true facts. He has been responsible for bringing these other people to the bar of justice, and then they want to prosecute him and come in here and say his figures are wrong and everything else.

All of these things bundled together give you people your duty.

They give to this man over here his inalienable right under our law to have you people weigh these facts together, censor them fairly, justly to the Government and to him and render your verdict good and true, and I want to thank you for your time, and I appreciate your efforts.

30 And thereupon Mr. Manion further addressed the Court and Jury in argument on behalf of the Government as follows:

By Mr. Manion: Ladies and gentlemen, this, I think, is a very curious case. Mr. Struett has, in effect, told you that his client is guilty, which I think makes your duty, your judgment very clear, and it should make it very simple and very easy.

He has also told you that other people are guilty, and apparently that seems to be the defense, that Brandt is guilty, Kusper and Sobieraj are guilty, and, apparently, the Internal Revenue Service in its judgment is guilty, and the United States Attorney is guilty in his dealings with Mr. Struett and Mr. Struett's client.

The only issue that you have to determine is the guilt of the defendant Marzec. Does or does not the evidence show he is guilty of attempted evasion of his personal income taxes for the years of 1949 and 1950?

I think that probably is as clear now as it will ever become to you. I am not going to take much time in answering Mr. Struett.

31 At this juncture, I would point out to you, though, that we still have not gotten a figure from Mr. Marzec from the defendant in this case as to the amount of money he either kept or the amount of money he disbursed, even now.

This document that I think Mr. Struett referred to as Government's Exhibits, it is Defendant's Exhibits 34 through 42, and you will see it as Mr. Marzec's proposed original record. These are the records which are to establish the amounts of money paid to the others. There are no amounts of commissions appearing in there at all.

You will see the records and see for yourselves whether you think that is a clear representation of what he kept and what he received and what he distributed.

I defy anybody to make very much out of this. Mr. Marzec might possibly have done so if he had cared to do it on the witness stand, but he didn't do it.

Mr. Struett spent a lot of time attacking Mr. Sobieraj's records, the Exhibit 33, the little black book.

32 Nevertheless, this book is the only evidence in the record of the amount of money received by Sobieraj

from the defendant Marzec. I am a little at a loss to understand why this book is so strongly attacked when there is no evidence to indicate that he ever paid him any more than appears in this book, and there isn't a bit of evidence anywhere in the record that indicates Mr. Sobieraj ever received another cent more.

I think the one thing that Mr. Struett has said that should particularly be answered by me is that he has attempted to infer that Mr. Marzec throughout his dealings after this investigation began was controlled and governed by the unseen hand, that is defendants Brandt, Sobieraj and Kusper.

You will recall Mr. Max Miller was on the witness stand, and he said he was the one who got the attorney, Richardson, for the defendant Marzec, and he also said that he and the defendant Marzec were jointly engaged in several business dealings and several profitable operations together.

There is no evidence, outside of the allegations of
33 Mr. Marzec and Mr. Struett, to indicate that anyone other than Mr. Miller counseled and advised Mr. Marzec as to whom Marzec select. They could have called Mr. Richardson if they had chosen to do so. They didn't put him on the witness stand, and we put on Wilson, the accountant, and Wilson told you who he was working for and who brought him into the case, that Richardson brought him into the case.

He would infer there was a control there from these others which prevented Marzec from telling the truth to the Internal Revenue officers and the special agents, and the same control would apparently operate to prevent him to correctly report his income taxes for these two years, but looking at the tax returns, you recall the testimony of Mr. Osheroff. Mr. Marzec, in fact, did report in the

income tax returns the commissions he had paid to these other men by check.

As far as letting any cats out of the bag, the cat was let out of the bag as soon as he reported these commissions.

If these men were doing something wrong as far as the PRCU was concerned, I don't think it would make much difference to the PRCU whether they took a dollar, one hundred dollars, one hundred thousand dollars, as the principle was the same.

The tax returns as filed showed deductions, showed the receipt of these commissions, showed the deductions of commissions paid to Sobieraj and to Kusper.

He says we now say Kusper never got a dime of it, even though he has been indicted by the grand jury. We never said that to you. It is obvious that Kusper got checks, and those were reported and deducted and have been credited to Mr. Marzec, and they are still credited to him now as deductions from these other reported receipts.

What we have said and continue to say is that we have no evidence of any cash payments to Mr. Kusper in excess of these checks, and Mr. Marzec hasn't given you any evidence, other than his allegation he paid him cash. He didn't tell you how much cash. He could have given him a dollar, and that would have been cash payment, so let's assume that Mr. Marzec's statement is true when he says he paid Mr. Kusper cash.

We still don't know, and you don't know how much cash he paid him. You saw the man on the witness stand, and you heard him. He talked generally.

Mr. Worcester didn't testify that his investigation and Brandt's admissions coincided exactly.

Again let me recall what Mr. Worcester testified about Mr. Brandt, that Brandt had admitted over a six or seven

year period the receipt of some $45,000.00 from Mr. Marzec, and because Mr. Brandt could not identify the year or years in which he received that money, those sums were credited to Mr. Marzec as against unreported receipts for the two tax years in question. We may have credited him with a great deal more than we are entitled to for his payment to Mr. Brandt, for all I know and for all you know. Maybe he paid Brandt in 1948, 1951 or 1952 or 1953 a goodly portion of these moneys, but because we couldn't fix it as to the year, we have thrown it all arbitrarily into these two years, because Mr. Marzec had
36 said he paid him these sums in these two years.

Mr. Marzec also said he paid him sums in other years. Mr. Brandt has set the figure at $45,000.00, but we can't set it one way or the other. He said Brandt was the treasurer, Sobieraj the appraiser and Kusper the lawyer, and they had all the control, and again I must remind you the only man you are trying is Mr. Marzec, the little fellow in the little desk in the little room. He didn't mention that the little fellow at the little desk in the little room had with him a lot of big checks and a lot of big sums of money.

If you go through these checks, ladies and gentlemen, and a lot of them are payable to cash, you will find one endorsement in here, and one endorsement only — Joseph or Joe Marzec or J. T. Marzec.

He talked about this one check of Robert Erskine. As you well recall, this was the one that Mr. Milton testified to that Marzec requested cash, and Milton said, "Because I have not dealt with you before, I won't give you cash. Let's escrow it with somebody else," and the escrow was ultimately set up in Mr. Kusper.

37 If you will turn the check over and look at the endorsement, and I hope you do, it was endorsed by Mr.

Erskine, the attorney representing the client, and below that appears the blank endorsement of S. T. Kusper, and then the final endorsement, Joseph T. Marzec.

If Mr. Kusper were so important, and Mr. Marzec so tremendously unimportant, why in the world would this have happened? Why would this have had to pass through Marzec's hands?

It didn't go through his hands, obviously, for the purpose of maintaining a record, because there wasn't any record. It couldn't very well have gone through Marzec's hands to protect Mr. Kusper, because Kusper had to endorse the check, because it was endorsed to his order in the first place.

I think it is quite clear that although there is no question these other people who are not on trial before you now, that they participated to some extent or other in these funds, that it was Mr. Joseph Marzec, our present defendant, who was the person who made the whole machinery go.

It was he who saw the brokers and made the deals
38 with the brokers, and now Mr. Struett would have you believe that Mr. Marzec, or that I said that Mr. Marzec went out and made the deals with the brokers and adjusted his commission percentages with the others.

I didn't tell you that. Mr. Marzec himself told you that while he was on the witness stand. He said he went—that when Scott came in it was Marzec who dealt with Mr. Scott, and he didn't tell you anything about running in to see Mr. Brandt or Mr. Kusper or having him go through there, through Mr. Sobieraj and arranging the percentages.

Mr. Marzec himself made these arrangements, and he did the same thing with Mr. Sheldon, by his own attorney, and with Mr. Milton. He did the same thing with Henry

Banach, and Banach came in in 1948. Who did Banach see? He saw Marzec, and it was Marzec with whom Banach made his arrangements as to the percentage of the commission and as to the manner in which the commission would be paid, whether it would be cash or whether it would be by check.

These were not matters dictated by the other people
39 to whom Mr. Marzec distributed some of his money.

If you will look at all the evidence, which I think is very clearly before you, I think that the absurdity of the allegation that Mr. Marzec was only a cog in this wheel, that he was being dominated by the others and told what to do, coerced, in effect, into filing false tax returns, that that is false.

Let's take these checks of Milton, which were the cashier's checks drawn on the American National Bank & Trust Company.

Those checks, as you will see, were originally made payable to Mr. Milton himself, and he, in turn, endorsed them in blank, just wrote his name, Cyril Milton, across the top.

I think you ladies and gentlemen know as well as I do that when a check is endorsed in blank, any person to whom that check is delivered may proceed to cash it. It is a blank endorsement on a negotiable instrument, but the endorsement that appears in these checks again is only the endorsement of Joseph T. Marzec.

These others were so influential, were the dominant
40 parties in here — if so — why is it these checks, some of them at least, do not bear the endorsement of one of the other people?

If they are to be cashed and through a foreign bank without the maintenance of records, we submit why they should leave Joe Marzec alone with all of this cash — that I think the only reason for it is clear, and that is that

Mr. Marzec was the person who was in the position to handle the cash, and he was the one who made the arrangements with the others, with the brokers, and I think he probably paid the others, as I have indicated before; and I think it is reasonable to infer he received what he could get and he distributed what he had to pay to maintain himself in his position, and I think those are the standards that governed his activities.

Similarly, with the Max Miller checks, as you go down through them you will see a lot of these are checks payable by cash, and you will see a lot of those checks are endorsed Joseph Marzec or Joseph T. Marzec. Without exception, none of them bear the endorsement of any of these other persons.

This is a small point but one I think may possibly
41 might need considering; but I don't think anything was said in the testimony or by myself about any death warrant for the defendant Marzec. The punishment is not something for the jury to concern itself with.

I think we can take notice of the fact there is no death punishment for failure to pay taxes, and I didn't say anything about a death warrant. There was something about a deathbed confession, but nothing about a death warrant.

Mr. Struett has tried to tell you that we should and do in fact have additional evidence indicating we received cash payments by Mr. Kusper for Mr. Marzec, that we must have such evidence, because there is an indictment pending in the file as to Mr. Kusper.

He said that Dorothy Sipiora was a very good source of such evidence. You saw Miss Sipiora. She was on the witness stand here yesterday, and we have subpoenaed her. She was subpoenaed at the time all of these defendants were joined together for trial. Two of them, Brandt

and Sobieraj, have pleaded guilty, and one yet remains to be tried, but if Miss Sipiora had evidence of cash
42 against Mr. Kusper, she was on the stand yesterday, and if Mr. Struett, the defendant, who called her as a witness — and you didn't hear one word of testimony from her to that effect, and the reason there isn't any is because she hasn't got any to give.

She cannot identify any cash going into Mr. Kusper's hands. Those are Mr. Marzec's allegations, and his allegations stand unsupported either by records or by the testimony of any third party independent witnesses, and I think that Mr. Marzec's interest in the outcome of this case and his obvious interest in putting as much of this money into the hands of others — in other words, to reduce himself more and more and less and less as a receptacle, that that is obvious to all of you.

Mr. Struett mentioned a conference in 1951, September of 1951, which Mr. Marzec denied ever occurred. You heard Mr. Wolfe and Mr. Osheroff testify that the conference was held. They asked Mr. Marzec about these various matters, and Mr. Marzec turned his head and wouldn't talk to them.

43 He now tells you that Mr. Marzec denies the conference. That is a matter for you to determine, ladies and gentlemen, who is telling the truth at that juncture.

You saw Mr. Wolfe and you saw Mr. Osheroff, and you heard them on the stand. You saw Mr. Marzec and you have heard him on the stand.

I will leave it for your determination as to whether or not that conference ever did or did not in fact take place.

I submit to you there is no reason why Wolfe or Osheroff should manufacture a conference. There is no need to manufacture one when there are so many others that are obvious, where there are transcripts, where there have been reporters present.

Another point I should mention is the amended return, Government's Exhibit No. 3. Mr. Struett points out the amended return was filed three months after the filing of the 1950 return, and he would have you believe that that represents receipts or picks up all the income owed by Mr. Marzec for both of these years.

If it does, supposing that is the total excess income
44 which was not reported and which should have been reported by the taxpayer; it was not filed until fifteen months after the 1949 tax return was filed. It was not until several months after Mr. Osheroff had begun the tax investigation in this matter.

It was not filed until after Mr. Marzec had been brought into the Intelligence Division and had been interrogated about receipts from others, and it was not brought—it was not filed until after his accountant had been out and examined Mr. Banach's records.

I submit to you that that tax return, if it proves anything, certainly does not prove an honest effort on the part of Mr. Marzec to correct an innocent mistake in reporting or accounting for his taxable income for these two years.

Lastly, ladies and gentlemen, I would like to refer very briefly to Mr. Struett's inference that the Government has played favorites in this case.

He seems to feel at one time Mr. Marzec was our favorite, and now we have abandoned him and adopted Bruno Sobieraj as our favorite.

45 It is not the position or the function of the United States Attorney or the Department of Justice to pick or choose between defendants. Mr. Marzec has been a subject of investigation, and that has been established by evidence brought out by Mr. Struett for a period now of almost, better than six years. This is 1957, and he began in 1951.

I think it is clear that Mr. Marzec has at all times been a subject. Mr. Marzec denied receipt of these funds, and the efforts of the agents — and they told you what they tried to do, to determine what they got and what he paid out, were all essentially blocked by the refusal of any of these defendants in the early stages of this investigation to tell us anything, because the brokers did have records and had their own tax returns to protect and justify.

It wasn't difficult to trace funds into the hands of Marzec through them, but it was impossible, without the cooperation of Marzec and the cooperation of others, to trace money from him into the hands of the other three, but to infer and say we have attempted to help and con-
46 ceal the others, I think it is ridiculous.

You heard Mr. Marzec himself on cross examination yesterday. He admitted to me that nobody in the Government ever made him any offer or promise of immunity. You saw Mr. Reeb on the stand, my predecessor in this case, and you saw Mr. Klenha, and he told you what he told Mr. Struett when he brought in these long question-answer statements of Joseph Marzec.

To say that there has been any unfair dealing with Mr. Marzec, I say that is an allegation that is not supported by evidence in the record, but also which is directly contradictory to every bit of evidence in the record.

We do not say that Mr. Sobieraj is or is not a nice gentleman. We are not in a position to decide or pass on the morality or questions of niceness.

What I have said and what we have vouched for Mr. Sobieraj to the extent he testified and we called him as a witness, is that Mr. Sobieraj has pleaded guilty in this matter. He has come forward and admitted the essential allegations of the indictment.

47 Mr. Struett points out there is a difference in the amounts shown in Mr. Sobieraj's records and the amounts shown in the indictment, and I have told you before, and I think the Judge will so instruct you in a few minutes, that a criminal type prosecution is not for the purpose of determining tax liability.

The only issue to be decided is whether or not there was a substantial under-payment, and the failure to pay a substantial portion of the tax due.

Whether it is ten thousand dollars, fifteen thousand dollars, twenty or twenty-five thousand dollars is immaterial.

There was some substantial deficiency, some substantial understatement, and that deficiency in the understatement was done wilfully and knowingly, and it does not establish this man's liability or the tax liability of any other man, whether he be Bruno Sobieraj, Frank Brandt or Stanley Kusper.

I don't think I will keep you any longer, ladies and gentlemen. I think that covers essentially the points I noted that I felt should be answered.

At this time, as I repeat again, I think the evidence
48 in this case, that it goes to prove beyond any reasonable doubt that Mr. Marzec has and did in fact during both years 1949 and 1950 attempted to evade and defeat his taxes by filing an incorrect tax return; that there was a substantial tax due from him, and he knew it was due as to both of those years, and on the basis of that evidence we will respectfully ask that you return a verdict of guilty as to both counts in the indictment.

Thank you.

49

IN THE UNITED STATES DISTRICT COURT

* * (Caption—No. 55 CR 679) * *

CERTIFICATE

I hereby certify that the above and foregoing transcript comprising pages numbered consecutively from 1 to 48 is a full, true and accurate transcript of the original shorthand notes of argument to the jury at the close of all the evidence, by Joseph A. Struett, Esq., and further argument to the jury at the close of all the evidence, by Albert F. Manion, Esq., upon the trial of the above-entitled cause before the Honorable John P. Barnes, Chief Judge of said Court, and a jury, on February 13, 1957.

/s/ Roy E. Fuller
Roy E. Fuller
Official Court Reporter
United States District Court
Northern District of Illinois

August 15, 1957

(p. 456 ½ blank)

FORM 1040
U.S. Treasury Department
Internal Revenue Service

COMPUTATION PROVED

U.S. INDIVIDUAL INCOME TAX RETURN 1949

For calendar year 1949 or fiscal year beginning ____, 1949, and ending ____, 1950

EMPLOYEES: Instead of this form, you may use Form 1040A if your total income was less than $5,000, consisting wholly of wages shown on Forms W-2, and such wages and net profits from $100 of other wages, dividends, and interest.

Do not write in these spaces
File Code
Serial No. 3941743
(Cashier's Stamp)

Name JOSEPH T. & FLORENCE MARZEC
(PLEASE PRINT. If this is a joint return of husband and wife, use first names of both)

HOME ADDRESS 4132 W. Barry Ave.
(PLEASE PRINT. Street and number or rural route)

Chicago (City, town, or post office) 41 (Postal zone number) Illinois

Social Security No. 323-07-5381 Occupation Insurance-Broker Accountant

Your exemptions

1. List your own names. If married and your wife (or husband) had no income, or if this is a joint return of husband and wife, list name of your wife (or husband).

List names of other dependents (as defined in instructions) with 1949 income of less than $600 who received more than one-half of their support from you in 1949. If this is a joint return of husband and wife, list dependent relatives of both.

Name (please print)	Check here whether you or your wife was at the end of your taxable year— 65 or over	Blind	On lines a and b enter— Write 1 if neither 65 nor blind; Write 2 if either 65 or blind; Write 3 if both 65 and blind.
Your name Joseph T. Marzec	Yes ☐ No ☑	Yes ☐ No ☑	a. Number of exemptions for you 1
Wife's (or husband's) name Florence Marzec	Yes ☐ No ☑	Yes ☐ No ☑	b. Number of her (his) exemptions 1
Name of dependent relative	Relationship	Address—if different from yours	
Thomas Marzec	Son		
Joseph Marzec, Jr.	"		
Robert Marzec	"		

Enter here total number of exemptions claimed (yours and your wife's plus one for each dependent listed above) ▶ 5

2. Enter your total wages, salaries, commissions, and other compensation (gross, i.e., before deductions for withholding taxes, social security, etc.). Also enter amount of income tax withheld. Persons claiming travelling expenses (including meals and lodging) while away from home, or additional expenses, see instructions.

Your income

Name of employer	Home employer's address (City and State)	Amount of income tax withheld	Wages
Follett School Co.	Union Chicago, Ill.	$	$ 8,970.00
		Enter totals... $	$ 8,970.00

3. Enter here the total amount of your dividends
4. Enter here the total amount of your interest (including interest credited on savings accounts; also interest from Government obligations unless wholly exempt from taxation) 8,819.43
5. If you received any other income, give details on page 2 and enter the total here 8,819.43
6. Add income shown in items 2, 3, 4, and 5, and enter the total here $ 17,789.43

Tax due or refund

IF INCOME WAS $5,000 OR MORE.—Do not use tax table. Compute tax on page 2. Use standard deduction or itemize deductions, whichever is to your advantage.

HUSBAND AND WIFE.—For split-income benefits, file a joint return. If filing separate returns, and one itemizes deductions, both must itemize.

7. Enter your tax from table on page 4, or from line 18, page 3 $ 1,397.64
8. How much have you paid on your 1949 income tax?
(A) By taxes withheld (this form 2, above). Attach Original Forms W-2 $ NONE
(B) By payments on 1949 Declaration of Estimated Tax 1,600.00
Enter total here ▶ 1,600.00
9. If your tax (item 7) is larger than payments (item 8), enter BALANCE OF TAX DUE here $
Do not attach the amount to the return.
10. If your payments (item 8) are larger than your tax (item 7), enter the OVERPAYMENT here $ (202.36)
Credited on your 1950 estimated tax ☐
Do you want any part of your overpayment refunded to you? NO (Yes or No)

If you filed a return for a prior year, state when and where filed 1948 Collector's office

Name in which return was filed

Address in which return was filed

County in which you reside COOK

Is your wife (or husband) making a separate return for 1949? NO (Yes or No)

If "Yes," state her (or his) name

Under penalties of perjury, I declare that this return (including any accompanying schedules and statements) has been examined by me and to the best of my knowledge and belief is a true, correct, and complete return.

Joseph T. Marzec 3/15/50
(Taxpayer's signature) (Date)

Florence Marzec 3/15/50
(Husband's or wife's signature, if joint return) (Date)

Name of person preparing return (other than taxpayer)

Address

[Gov't Exh. 2]

(P. 458)

Schedule C.—PROFIT (OR LOSS) FROM BUSINESS OR PROFESSION. (Farmers should obtain Form 1040F)

State (1) nature of business Insurance & Mortgage; (2) business name Joseph T. Marzec

(3) business address 4182 W. Barry

Do NOT include in this schedule cost of goods withdrawn for personal use or deductions not connected with business or profession.

1. Total receipts	Commissions		$14,452.52		
COST OF GOODS SOLD (To be used where inventories are an income-determining factor) (Enter the letters "C." or "C. or M." on lines 2 and 8 if inventories are valued at either cost, or cost or market, whichever is lower)			**OTHER BUSINESS DEDUCTIONS**		
2. Inventory at beginning of year	$		11. Salaries and wages not in line 4 (Commissions)	$ 4,350.00	
3. Merchandise bought for sale			12. Rent		
4. Labor			13. Interest on business indebtedness		
5. Material and supplies			14. Taxes on business and business property		
6. Other costs (explain in Schedule G)			15. Losses (explain in Schedule G)		
7. Total of lines 2 to 6	$		16. Bad debts arising from sales or services		
8. Less inventory at end of year			17. Depreciation, obsolescence, and depletion (explain in Schedule F)	413.09	
9. Net cost of goods sold (line 7 less line 8)	$		18. Repairs		
10. Gross profit (line 1 less line 9)	$		19. Other expenses (explain in Schedule G)	1,684.90	
			20. Net operating loss deduction (attach statement)		
			21. Total of lines 11 to 20	$ 6,447.99	
			22. Total of lines 9 and 21	$ 6,447.99	
			23. Net profit (or loss) (line 1 less line 22)		8,004.53

(P.463)

FILED
550 674
APR 19 1957
AT ____ O'CLOCK
ROY H. JOHNSON, CLERK

1949

Note

Pages 459 - 462 are on card 12.

Max Miller	$ 21,450.00	
Henry Banach	30,545.00	
Thomas G. Scott	5,355.00	
Cyril I. Milton	4,200.00	
William J. Hoppe	3,350.00	
Total Commissions		$64,900
Paid out:		
Stanley T. Kusper	2,175.00	
Bruno Sobieraj	7,848.33	
Frank A. Brandt	17,900.00	
Total paid out		$27,923.33
REMAINING COMMISSIONS		$36,976.67

Government Exhibit 38-B Defendant's Exhibit Identified Received

In the District Court of the United States, Northern District of Illinois, Eastern Division

No.

Roy E. Fuller - Official Court Reporter

(p.464)

1950

FILED
APR 19 1957
AT O'CLOCK
ROY H. JOHNSON, CLERK

Max Miller	$ 35,650.50	
Henry Banach	39,820.00	
Thomas G. Scott	1,725.00	
Cyril I. Milton	3,700.00	
William J. Koppe	600.00	
J. Cutler Sheldon	7,500.00	
Total Commissions		$ 88,995.50
Paid Out:		
Stanley T. Kusper	$ 4,710.00	
Bruno Sobierag	10,659.00	
Frank A. Brandt	28,235.00	
Total paid out		$ 43,604.00
REMAINING COMMISSIONS		$ 45,391.50

FILED 53cr614 (p.465)

APR 19 1957

AT ____ O'CLOCK ____
ROY H. JOHNSON, CLERK

Government Exhibit 39 Defendant's Exhibit ( ) Ident. ( ) Rec'd.
In the District Court of the United States, Northern District of Illinois, Eastern Division
No.
Roy E. Fuller - Official Court Reporter

JOSEPH T. MARZEC

Year Ended December 31, 1949

ITEM ADJUSTMENTS

	Return	Additions To Income	Corrected
Salary	$ 2,970.00		$ 2,970.00
Net Rents	485.08		485.08
Business	8,004.53	$27,874.67	35,879.20
Net Short-Term Capital Gains	561.01		561.01
Net Long-Term Capital Gains	78.65		78.65
Partnership	(309.84)		(309.84)
Adjusted Gross	11,789.43	27,874.67	39,664.10
Standard Deduction	1,000.00		1,000.00
Net Income	$10,789.43	$27,874.67	$38,664.10

(P.466)

JOSEPH T. MARZEC

Year Ended December 31, 1949

OPERATING STATEMENT

Real Estate Commissions Reported			$13,452.00
Real Estate Commissions Unreported			51,448.00
Total Real Estate Commissions			$64,900.00
Total Real Estate Commissions:			
Max Miller		$21,450.00	
Henry Banach		30,545.00	
Thos. G. Scott		5,355.00	
Cyril I. Milton		4,200.00	
Wm. J. Hoppe		3,350.00	
Total		64,900.00	
Reported		13,452.00	
Unreported		$51,448.00	
Less: Commissions Paid Out:			
Stanley Kusper	$ 2,175.00		
Bruno Sobieraj	7,848.33		
Frank A. Brandt	17,900.00		
			27,923.33
Net Real Estate Commissions			36,976.67
Add:			
Insurance Commissions Per Return			1,000.52
Total			37,977.19
Less:			
Other Expenses Claimed Per Return			2,097.99
Net Business			35,879.20
Net Business Reported			8,004.53
Additional			$27,874.67

JOSEPH T. MARZEC

Year Ended December 31, 1949 (p.467)

COMPUTATION OF INCOME TAX FOR INDIVIDUALS NOT USING TAX TABLE

Net income				$38,664.10
Less: Exemption (5) 1 $600				3,000.00
Income subject to tentative tax				35,664.10
Income subject to tentative tax; one-half of such income if joint return				17,832.05
Tentative tax				6,116.03
Tax Reduction:				
	$0- $400	17%	$ 68.00	
	$400-$100,000	12%	685.92	
Total tax reduction				753.92
Combined normal tax and surtax				5,362.11
Multiply amount of combined tax by 2 if joint return				10,724.22
Income tax liability disclosed by return				1,397.64
Deficiency in income tax				$ 9,326.58

(p.468)

Government Exhibit 40 Defendants Exhibit
In the District Court of the United States, Northern District of Illinois, Eastern Division BEFORE HARRIES J.
No.
Roy E. Faller - Official Court Reporter

FILED
APR 19 1957
AT O'CLOCK
ROY H. JOHNSON, CLERK

53 Cr 679

JOSEPH T. MARZEC

Year Ended December 31, 1950

ITEM ADJUSTMENTS

	Return	Additions To Income	Corrected
Salary	$ 3,010.00		$ 3,010.00
Interest	10.00		10.00
Business	23,482.05	$21,671.00	45,153.05
Net Capital Gains	127.02		127.02
Net Rents	(1,508.30)		(1,508.30)
Partnership	(238.98)		(238.98)
Adjusted Gross	24,881.79	21,671.00	46,552.79
Standard Deduction	1,000.00		1,000.00
Net Income	$23,881.79	$21,671.00	$45,552.79

JOSEPH T. MARZEC

Year Ended December 31, 1950

(p. 469)

OPERATING STATEMENT

Real Estate Commissions Reported			$35,000.50
Real Estate Commissions Unreported			53,995.00
Total Real Estate Commissions			$88,995.50
Total Real Estate Commissions:			
Max Miller		$35,650.50	
Henry Banach		39,820.00	
Thos. G. Scott		1,725.00	
Cyril I. Milton		3,700.00	
Wm. J. Hoppe		600.00	
J. Cutler Sheldon		7,500.00	
Total		88,995.50	
Reported		35,000.50	
Unreported		$53,995.00	
Less: Commissions Paid Out:			
Stanley Kasper	$ 4,710.00		
Bruno Sobieraj	10,659.00		
Frank A. Brandt	28,235.00		
			43,604.00
Net Real Estate Commissions			45,391.50
Add:			
Insurance Commissions Per Return			1,990.81
Total			47,382.31
Less:			
Other Expenses Per Return			2,229.26
Net Business			45,153.05
Net Business Reported			23,482.05
Additional			$21,671.00

JOSEPH T. MARZEC

Year Ended December 31, 1959

COMPUTATION OF INCOME TAX FOR INDIVIDUALS NOT USING TAX TABLE

Net income				$45,552.79
Less: Exemption (5) X $600				3,000.00
Income subject to tentative tax				42,552.79
Income subject to tentative tax; one-half of such income if joint return				21,296.40
Tentative tax				7,974.78
Tax Reduction:				
	$0- $400	13%	$ 52.00	
	$400-$100,000	9%	681.73	
Total tax reduction				733.73
Combined normal tax and surtax				7,241.05
Multiply amount of combined tax by 2 if joint return				14,482.10
Alternative tax				14,480.89
Balance of income tax liability				14,480.89
Income tax liability disclosed by return				5,077.72
Deficiency in income tax				$ 9,403.17

JOSEPH T. MAZZEI

Year Ended December 31, 1950

COMPUTATION OF ALTERNATIVE TAX - INDIVIDUALS

Income subject to tentative tax; one-half of such income if joint return			$21,276.40
Less: Excess of net long-term capital gain over net short-term capital loss:			
If joint return, enter one-half of such amount			63.51
Balance subject to tentative tax			21,212.89
Tentative tax			7,939.22
Tax Reduction:			
$0- $400	13%	$ 52.00	
$400-$100,000	9%	678.53	
Total tax reduction			730.53
Combined partial normal tax and surtax			7,208.69
Multiply amount of combined partial tax by 2 if joint return			14,417.38
Add: 50% of excess of net long-term capital gain over net short-term capital loss in above, if joint return			63.51
Alternative tax			$14,480.89

DEFENDANT'S EXHIBIT 15
(Filed Apr 25 1957)

Testimony of Mr. Joseph T. Marzec, taken in the Office of the Intelligence Unit, Bureau of Internal Revenue, Room 1020, 105 West Monroe Street, Chicago, Illinois, on April 12, 1951, at 11:00 A.,M. in the matter of his income tax liability to the United States.

Present:

Mr. Joseph T. Marzec, Taxpayer
Mr. Arthur H. Wilson, Accountant
Mr. Samuel Osheroff, Internal Revenue Agent
Mr. Vitold J. Kondrad, Internal Revenue Agent
Mr. Donovan C. Johnson, Special Agent
Miss Yolanda M. Sullivan, Recorder

Questions were asked by Special Agent Johnson and answers made by Joseph Marzec, unless otherwise indicated.

Q. Mr. Marzec the purpose of this interview is to question you concerning transactions effecting your income tax liability. However you are not required to answer any questions which you think might incriminate you under Federal laws. Is that clear?

A. Yes.

Q. Knowing this are you still willing to give us a statement?

A. Yes.

Q. Will you please stand and raise your right hand? Do you solemnly swear the testimony you are about to give will be the truth, the whole truth, and nothing but the truth, so help you God?

A. I do.

Q. Will you please state your full name and residence for the record?

A. Joseph T. Marzec, 4182 West Barry Avenue.

Q. By whom are you employed?

A. Polish Roman Catholic Union.

Q. What is the address?

A. 984 Milwaukee Avenue.

Q. Have you had any transactions with Henry Banach?

A. Prior to February 24, 1951, I received a notice from Henry S. Banach regarding some commissions paid. This notice was received on Form 1099. Subsequently, it was returned to Banach by my representative, Arthur Wilson, with a letter stating that no money was paid on any loans or commissions. I also informed through my representative to the Commissioner of Internal Revenue that I had not received the claimed commission nor had I rendered any services on behalf of Banach for which I would be expected to be paid.

DEFENDANT'S EXHIBIT 15B
(Filed Apr 25 1957)

Q. Have you had any business transactions with Max E. Miller and, if so, what was the nature and extent of such transactions?

A. Yes, I have had with Max Miller for a number of years. This was on the phone buying buildings, investing in buildings, and helping to secure loans. These commissions were paid to Miller and divided later on, and due to a form of the bookkeeping some differences have arisen for the years 1948, 1949. These errors were not intentional but due to lack of proper information.

Q. How extensive in amounts do you estimate these errors to be?

A. The statement submitted by Mr. Max Miller in my own records indicate a difference from the amount reported of $1180.00 which has not been required. This is for the year 1948. For the year 1949 a larger amount is in question.

Q. Other than the adjustments to be made on the Max E. Miller account, have you reported income from all sources on your income tax returns?

A. Yes.

Q. How many years have you been doing business with Max E. Miller?

A. I would say five or six years.

Q. Are we to understand then that you have not entered into any business associations with any other individuals, and that your only source of income has been your salary from the Polish Roman Catholic Union, plus your insurance business and joint venture with Mr. Miller?

A. That is correct with the following additions: A. W. Wanek, William J. Hoppe, and such other minor transactions that may have been revealed on my returns.

Q. On your 1949 return, in Schedule C, Line 11, under "other business deductions", you show an item entitled commissions in the amount of $4,350.00, will you explain this item to us?

A. The amount was paid to a cooperating agent in procurement of said loans.

Q. Mr. Marzec, have you any further statement you would like to make?

A. No.

Q. Mr. Wilson, is there anything that you would like to add to this statement?

A. The only statement that I would like to make is that in referring to the Banach matter my client informed

me of the 1099 and we took such steps as we thought proper to bring it to the attention of the Government.

DEFENDANT'S EXHIBIT 15A
(Filed Apr 25 1957)

Q. At any time prior to or during the taking of this statement have you been threatened, intimidated, coerced or promised any reward by any Government agents in connection with the taking of this statement?

A. No.

United States of America }
Northern District of Illinois } ss.

I have carefully read the foregoing statement, consisting of three (3) pages, which is a transcript of questions which were propounded to me and my answers to such questions, on the twelfth day of April, 1951, at 11:00 A.M., at Chicago, Illinois, relative to my income tax liability to the United States. I hereby certify that the foregoing answers are true and correct, that I have made the corrections shown and I have placed my initials opposite each correction, and that I have initialed each page of the statement.

.....

Subscribed and sworn to before me
this ..... day of .....

1951, Chicago, Illinois
Donovan C. Johnson, Special Agent.

DEFENDANT'S EXHIBIT 33
(Filed Apr 25 1957)

TREASURY DEPARTMENT
Bureau Of Internal Revenue
Washington, D. C.

TRANSCRIPT OF PROCEEDINGS

In Re: Joseph T. Marzec
Chicago, Illinois
September 12, 1952

Conference Held:
Suite 620, 105 West Monroe Street
Chicago, Illinois
September 12, 1952
10:35 A. M.

Present:

James T. Dewan
Special Attorney
Region II, Penal Div.
Chief Counsel's Office

Nicholas M. Riewer
Technical Adviser
Region II, Penal Div.
Chief Counsel's Office
For the Government

Tyrrell A. Richardson
Attorney at Law
Chicago, Illinois

Arthur J. Wilson
Certified Public Accountant
Chicago, Illinois
For the Taxpayer

Joseph T. Marzec
Taxpayer

Reporter: Ruth Elise Halfeld

Mr. Dewan: May the record show that a power of attorney to Mr. Tyrrell Richardson, an attorney of Chicago, Illinois, and Mr. Arthur J. Wilson, a Certified Public Accountant of Chicago, was filed at the beginning of this conference, and that this power revoked a previous power which had been granted to Mr. Wilson exclusively. May it also show that fee statements were filed by both Mr. Richardson and Mr. Wilson, and that Mr. Wilson presented his Treasury card. Mr. Richardson indicated that application for a new Treasury card has been made and that since Mr. Marzec is present personally, that will be sufficient for the purposes of this conference.

At the very outset, Mr. Marzec—it may be just a formality—you have heard it several times—but I'll say it again. This is your conference, you may present anything you desire, but you are not obliged to say anything. You have the right to remain silent—your silence will not—no way be construed against you, and any statements you may make might be used against you. You are not obliged to make any self incriminating statements. You understand that? May the record indicate Mr. Marzec nodded assent. If there is any question at all in your mind, please raise it. It—do you understand that, Mr. Marzec?

Mr. Marzec: Yes.

Mr. Richardson: What is your name, please?

Mr. Marzec: Joseph T. Marzec.

Mr. Richardson: You are the same Joseph T. Marzec mentioned in the proceedings here?

Mr. Marzec: That's right.

Mr. Richardson: Where do you live?

Mr. Marzec: 4182 West Barry, Chicago, Illinois.

Mr. Richardson: What is your business or occupation, please?

Mr. Marzec: I'm employed at—as the mortgage man—that is, I work for the Mortgage Department—a clerk-bookkeeper.

Mr. Richardson: At what company are you employed as a mortgage man—bookkeeper—what organization?

Mr. Marzek: Polish Roman Catholic Union.

Mr. Richardson: Are you bonded there?

Mr. Marzec: Definitely, I don't know.

Mr. Richardson: How long have you been with them?

Mr. Marzec: Sixteen years past.

Mr. Richardson: During this 16 years you have never had any difficulty as to honesty or integrity?

Mr. Marzec: Not at all.

Mr. Richardson: What would you say the assets of this company are worth?

Mr. Marzec: Thirty-one million.

Mr. Richardson: You work in the home office?

Mr. Marzec: That's right.

Mr. Richardson: How many are employed?

Mr. Marzec: One hundred.

Mr. Richardson: Your position is one deemed as a trust?

Mr. Marzec: That's right.

Mr. Richardson: Trust and confidence must be reposed, is that right?

Mr. Marzec: That's right.

Mr. Richardson: During this 16 years, have you had any difficulty?

Mr. Marzec: None that I know of.

Mr. Richardson: Answer yes or no.

Mr. Marzec: None.

Mr. Richardson: Have you had any suits against you in these 16 years?

Mr. Marzec: No.

Mr. Richardson: You have never had any suits served against you—civil or criminal?

Mr. Marzec: No.

Mr. Richardson: You still—this concern knows about this investigation, is that true?

Mr. Marzec: Certain officers.

Mr. Richardson: The big officers know about it?

Mr. Marzec: That's right.

Mr. Richardson: They have known about it for how long a period would you say?

Mr. Marzec: Oh, over a year.

Mr. Richardson: During this year, from time to time the Department of Revenue have been in there investigating their books and checked the books and records?

Mr. Marzec: They have.

Mr. Richardson: In spite of this, they have displayed no intention of relieving you, is that right?

Mr. Marzec: That's right.

Mr. Richardson: That's all as far as I'm concerned. You understand the purposes of this view, and from now on you take over—you understand the purpose of this?

Mr. Dewan: That's right.

Mr. Wilson: Well, you want me to question him?

Mr. Richardson: If you want to question him—

(Off the record conversation)

Mr. Richardson: Mr. Marzec, in event a search of the record and compilation of the record at the end of this proceeding, and the evidence is all in, and presented at any time by the government to you and what is in your

opinion a fair and reasonable amount due by you, you are prepared and willing to pay any deficiencies there may arise out of here, is that right?

Mr. Marzec: That's right.

Mr. Richardson: You at no time intended to defraud, nor do you still intend to defraud the government?

Mr. Marzec: Not at all.

Mr. Richardson: It will be due to negligence or an honest mistake on your part, but is not due to any intent to defraud the government?

Mr. Marzec: That's right.

Mr. Richardson: It's your contention that the amount which they found delinquent as a result of your negligence or mistakes compared to the gross amount really paid by you is negligible at this time?

Mr. Marzec: That's right.

Mr. Richardson: What's your name, please?

Mr. Wilson: Arthur J. Wilson.

Mr. Richardson: Where do you reside?

Mr. Wilson: 5737 Michigan Avenue.

Mr. Richardson: What is your business?

Mr. Wilson: A Certified Public Accountant.

Mr. Richardson: How long?

Mr. Wilson: Twenty-nine years.

Mr. Richardson: Duly licensed in the State of Illinois?

Mr. Wilson: That's true.

Mr. Richardson: Duly licensed to practice before the Treasury Department. During your employment, did you have occasion to become acquainted with one by the name of Joe Marzec?

Mr. Wilson: Yes.

Mr. Richardson: The same Joe Marzec seated here at my left?

Mr. Wilson: Yes.

Mr. Richardson: What was the occasion you became acquainted?

Mr. Wilson: Mr. Tyrrell Richardson—

Mr. Richardson: That's myself.

Mr. Wilson: called me and said Mr. Marzec had a tax matter in which he desired I represent Mr. Marzec, and that I should contact him, Marzec, and make an appointment.

Mr. Richardson: Did you?

Mr. Wilson: I did.

Mr. Richardson: And you spent time and made an examination of his books and records in the time in question here—is that true?

Mr. Wilson: Not completely, no.

Mr. Richardson: What did you do about his books and records?

Mr. Wilson: After making an appointment with Mr. Marzec, I went to his home and asked for his records—bank statements, cancelled checks, ledger and cash books he maintained, and for securing possession of them together with a power of attorney. I made an appointment with the revenue agent engaged in making the examination of Mr. Marzec's returns—

Mr. Richardson: Your purpose—what was the purpose in making the appointment?

Mr. Wilson: Well, it was more convenient for Mr. Marzec for the work to be done at a place other than his home for one thing, and secondly, he thought I would be better able to take up any technical questions that would arise. As a matter of fact, the agents audited the books and records to check—

Mr. Richardson: Yes—

Mr. Wilson: It was your intention to cooperate with the agents—to produce whatever you got, and if there

was any variance in the returns, you wanted to be in a position to explain it.

Mr. Richardson: That's right. Mr. Marzec—has he tried to volunteer and produce the records they wanted?

Mr. Wilson: He has always furnished every record that he has been requested to furnish. He has furnished it to me.

Mr. Richardson: So at all times during this proceeding, Mr. Marzec has shown a spirit of cooperation to produce his records?

Mr. Wilson: That's right.

Mr. Richardson: And that you have turned them over to the department?

Mr. Wilson: I have.

Mr. Richardson: Are the records still with the department now?

Mr. Wilson: No. There's some question about a few checks that may be retained by the department.

Mr. Richardson: But most of the records have been returned to Marzec. Whatever the department wanted, you agreed to let them keep?

Mr. Wilson: That's right.

Mr. Richardson: What has the department kept?

Mr. Wilson: I don't recall the specific items. At the time I first contacted Mr. Marzec I asked if his records included all transactions—was there anything I should know about in—in the records. He said his records were complete. We did make some test—we checked his bank deposits to see how closely they came to the receipts reported. The bank deposits were a little in excess of receipts which was explained to us—which appeared to be reasonable. He was an insurance broker, in which case he would collect total premiums and would remit, after deducting his commissions, to other brokers.

Mr. Richardson: You say a little in excess. That's indefinite. How much would you say—2%—3%.

Mr. Wilson: Very trivial.

Mr. Richardson: At all times during these proceedings you have counseled with Marzec and told him and agreed he should agree in case there's variance—between the just variance—he should pay the debt?

Mr. Wilson: That's right.

Mr. Richardson: And he has always manifested cooperation in this matter?

Mr. Wilson: That's right. During this time, as his auditor, there seems to be present one item of variance between Marzec's returns—

Mr. Richardson: And has come to my attention—

Mr. Wilson: One source of finances—one other dealer or broker he had transactions with. There were one or two items, omitted commissions, omitted, and by comparing—

Mr. Dewan: In one or several years?

Mr. Wilson: Yes, and we compared Marzec's records with the other broker and agreed with the agent to accept the correction for those particular amounts of money.

Mr. Richardson: That was a man named Max Miller?

Mr. Wilson: That's right, the variance was not material.

Mr. Richardson: That's right.

Mr. Wilson: Percentage points over the amount of business that would be added to say—

Mr. Richardson: How much business had he done, would you recall?

Mr. Wilson: I'm not sure.

Mr. Richardson: A couple of thousand?

Mr. Wilson: Maybe fifteen hundred—I haven't refreshed myself.

Mr. Richardson: We have no record to show what business he had done with Miller. What I'm trying to get at—the $1,500 was probably 5 or 10% of the business done with Miller that were—

Mr. Wilson: That's right.

Mr. Richardson: The only variance between Marzec and the department was where certain sums were to have been paid to Marzec by one Banach.

Mr. Wilson: That's right.

Mr. Richardson: And you have talked with Banach during the proceedings?

Mr. Wilson: I would like to explain the whole conversation I had with Mr. Banach.

Mr. Richardson: You may do so in your words.

Mr. Wilson: Mr. Marzec came into my office with a 1099. That is a federal form notifying a person they are reported as having received a certain amount of money. I asked Mr. Marzec did he receive that money from Banach. He said no. On the basis Mr. Marzec informed me he had not received that amount, I immediately wrote a letter to the Collector of Internal Revenue denying on the part of my client this sum of money. I also sent a copy, or a letter to Mr. Banach, who was the person who was supposed to have paid the money, telling him of the action we were taking. I subsequently received a letter from an auditor representing Mr. Banach, stating to me that I probably was misinformed, and that he had—his client had evidence to prove he paid this money to Mr. Marzec. I called this auditor up and asked he make an appointment with Mr. Banach for me in order that I might be better able to advise my client properly. That is, if he could show me he paid this money to Mr. Marzec I was going to advise Mr. Marzec to right about face and accept the responsibility. After some delay, because of the fact Mr.

Banach was out of the city, an appointment was made and I would go to see Mr. Banach at his office on North Western Avenue—the exact address I don't recall.

Mr. Banach had in his office at that time his wife and his son, and possibly one other person. I don't recall who the person was, and he also had his records for the year 1948. He did—the year 1948 wasn't there, nor 1950. I told him I was anxious to arrive at the truth of the matter. I didn't want to be in the position of representing someone and not know the exact facts. Mr. Banach then showed me a record, a cash book, in which he showed on his left hand side a receipt of commission of 1% from the Polish Catholic Union—termed a finders' fee—and also an additional commission which would vary but usually 5% paid by the person getting the loan—the borrower. Then on the right side of his disbursement record he would show a pay-out which would be evidenced in most cases by a check payable to cash, and on that check would be marked an address, presumably the building being mortgaged. There was no endorsement on the check by Banach, no endorsement of my client, but he did show me two checks—only two—payable to Joseph T. Marzec, and those two checks I would say appeared to have the endorsement of Joseph T. Marzec.

He also showed me a bank deposit in the name—a duplicate deposit ticket—which was showing a deposit had been made to the account of Joseph T. Marzec. I don't recall the name of the bank, and that was the only evidence he was able to show me that he had paid any money to Joe Marzec over a period of years. He also told me in a conversation Marzec does admit he got that money. He admits he got two commissions from him, and his deposit was made in the bank to Marzec's credit, at which time Marzec was in Florida and Banach put the money in the bank.

He also went on and explained to me he belonged to a different faction in this fraternal order, and the faction now in control—they have been continuously in control I might add, and in some prior year—1949 or 1950—they have a convention every four years and elect officers—he and the opposition group tried to put these other people out and feels, and because of his efforts in fighting them, they no longer would make any loans to him. I don't know whether they caused him to take this action or an examination of his records—I don't presume to state. I then pointed out to him as a business man who kept good records and who was acquainted with the necessity for getting payments for money, that his methods appeared to be loose, and it appeared to me he was in a bad position because his testimony against Marzec would have to be self-serving, because he was trying to use those payments as deductions, and that his word would be no better than Marzec's. The only defense he offered to that was he had consulted with some attorney, who told him that if anyone refused to accept a check—and that was his allegation—he should make out a check like that and pay the cash and the check would then serve as a voucher. At various times I have tried to get Mr. Banach to sit down with Mr. Marzec and to discuss the matters, but I have been unable to—but Mr. Banach, when I told him that, was antagonistic so that no progress was made that way.

We were able to go to Miller and check with his auditor item by item any differences. Other than that I haven't had any contact with the agents of the Treasury Department. I might—I—this should be in the record as a matter of opinion. The other is a fact I have at various times said t the revenue agents if they would give to me any item which Mr. Marzec did not report and show he received

it, we would accept the liability. I was even willing, if the omissions were in any number, to accept a negligence penalty for failing to have any record, and I felt the government would be better off in collecting the amount rather than to destroy the man and not collect the amount. If the man is indicted, the government will not be able to collect, because the man's net worth does not reflect the additional income that's being alleged he received from this man Banach.

Mr. Richardson: May I interrupt. That's what I was going to bring up—my next question with you. During a phase of your work, you talked to Mr. Marzec and he denied having a lock box or safety box of any kind?

Mr. Wilson: That's right.

Mr. Richardson: And you made, for the purpose of the return, a net worth statement?

Mr. Wilson: That's right.

Mr. Richardson: The net worth, does that include his interest in real estate and other various properties in and about the town of Chicago?

Mr. Wilson: That's right.

Mr. Richardson: As a result of the compilation of his net worth—I am putting it wrong—it corroborates the returns he had been filing over the years past?

Mr. Wilson: Yes—

Mr. Richardson: With minor variations?

Mr. Wilson: Substantially so—a few—one hundred in one place—

Mr. Richardson: It's a matter of getting a correct starting point. Are there any questions you would like to ask Mr. Wilson?

Mr. Dewan: Do I understand you gentlemen have concluded?

Mr. Wilson: I wanted to complete the statement to say this: That were he able to settle his civil liability, main-

tain his position in the community and the friendships he has made, he would be able to borrow enough to pay his debts.

Mr. Marzec: That's right.

Mr. Wilson: If he is prosecuted, he will lose his position in the community—not only the job—he will be unable to pay the taxes.

Mr. Dewan: Gentlemen, may I say this: That this office does not have the function of considering whether or not criminal prosecution, which has been recommended to it, will aid or impede the collection of taxes. We can't consider it.

Mr. Richardson: That's right at this time.

Mr. Wilson: We are trying to put it in the record for whatever it may be worth.

Mr. Richardson: So that whoever will have occasion to examine the record at a later date may be fully informed of the facts. I would like to make a few other statements. These statements made by me are subject to, of course, either a production of the evidence by myself or a search of your own records I might say will verify them. The only substantial variance we find between the returns of Marzec and the contention or the interest of the department is based upon whether or not he received any monies, or substantial monies, from a man by the name of Banach. The evidence outside of these three receipts we admit we got—

Mr. Dewan: Two or three?

Mr. Richardson: Two—based on checks and one based on a deposit in the bank while Marzec was in Florida. Outside of those, the only evidence the department has, we deny it, because the department, I think, should examine the evidence with the closest of caution. The only evidence these payments were made is Banach's statements,

which he tries to corroborate by producing checks which were drawn upon a bank by Banach himself. And I hold you cannot—it's my belief you cannot—hold my man for something Banach did off in a corner by himself and then come out and said that's Marzec. That's number one. Number two, Banach has attempted further to corroborate this evidence by affidavit, and I guess you will notice he will sign any affidavit put in front of him. I believe there was no time anyone from this department came out Banach wouldn't sign it. I want to call your attention to two cases in fairness to my man, because if it went to criminal proceedings and this evidence was used before a court or a judge, it would probably wing your case, because this affidavit is made by his son. First of all, his son at no time was present when any of these transactions—was never around Banach's office, has a business of his own, and knows nothing of what went on in his office. At that time Banach's son was engaged in a construction business. He received various deposits for building homes, and did not build homes, and as a result was called in the State's Attorney's office, was bailed out by his father to the tune of how much—I think something like twenty-five or thirty thousand dollars, so his reputation as a business man, honesty and sincerity, plus the physical impossibility of being in his father's office at the time—. He also tries to bolster it with the affidavit of his wife, whom I have met, and who is as fine and able a woman anyone would want to meet, but who was not present when the payments were at the Polish Roman Union and are meaningless except the interest to help her husband and can't be binding against Marzec because she was never present. In other words, thing I'm trying trying to get home to you fellows—when you are prosecuting Marzec on the testimony of a rather difficult prose-

tion witness, because after all he is a prosecution witness —a man I understand was in trouble with the department before—you check your records—don't take my word—a man who has a bad reputation and brings in evidence of a bad reputation in his statement, and third, he can bring nothing in to corroborate his testimony. I don't know any other questions you might want to ask, but we are here today with nothing to conceal. Marzec will answer any questions you want to ask; Wilson will answer any question you want to ask—nothing to conceal. If there has been any shorting of the government in this proceeding, outside of a few minor matters, the shorting has been elsewhere.

Mr. Dewan: It's your contention there were three checks?

Mr. Richardson: There's three credits.

Mr. Dewan: Three payments—two by check and one by cash from Banach to Marzec—that's all?

Mr. Wilson: That's all we know about—we accepted some corrections from Max Miller.

Mr. Dewan: I'm speaking only between Banach and Marzec.

Mr. Richardson: That's right, and I might may furthermore these were made in the early part of Banach's dealings. You heard the statement made by Mr. Wilson relative to this so-called Roman Catholic organization. I might say in passing that the President of this association is one of the highest class—acknowledged by anybody who knows him or knows about the banking business or banking business—that the President of the organization, Kanina, is the highest class idealistic man in public life today. Kanina is the head of this organization and Marzec would be his number three or four man in line as far as work and detail is concerned. Kanina not only has done a marvelous job, and by a marvelous job with

the Polish people and the relationship to the community generally,—no one having the welfare of the loan association, or the Polish people—people of Polish descent, or the Government at large itself in its relation with them, could fairly attack Kanina. This isn't my opinion—you can call any bank or go where you want, and yet in spite of this there was a desire for power and possibly enmity and a desire to make a little better loans. An entire new ticket was put together. A friend of mine was put on a rump ticket. He used to teach at DePaul. He put in a complete ticket from top to bottom—all the way down with an intent to defeat these people in power. This was done in Cleveland—

Mr. Marzec: Syracuse—

Mr. Richardson: Syracuse, New York, As a result of that election, not only was Banach's entire ticket beaten by Kanina but his entire board went back. I don't take the position that he is doing or done this to Marzec in the hope of striking Kanina or in the hope of hurting people that were in, but it would be interesting if you could read the minutes of that meeting and see the finagling that went on there. It would have to be a man loose with the truth who would attack Kanina. I don't think that was done there. What happened really was he hasn't been able to make loans since then, and how he wound up doing this I don't know, except to take care of them.

Mr. Wilson: His own tax difficulty is considerable because of the amount involved.

Mr. Richardson: I'll go further. I know something about your records I'm not supposed to know.

(Off the record conversation)

Mr. Richardson: As far as you people are concerned is it explained itself. In other words, the position I'm in, people coming to me and telling me statements they have

given to you because they are interested in Banach also. They are not statements you people have given me. They are statements given by people whom you have interviewed and who in turn told me the statements—given information. If you will check your records you will find Banach stated he gave money this way to other people and didn't get a receipt or a check for it there either. I can show you everybody Banach did business with—and I'll bring in those people—they got loans for him from these organizations—Banach not only paid them a commission in check but also demanded a check—a receipt showing what the check was for. If he paid a commission on a loan at 4752 Halsted Street, the check was for the commission and the receipt also showed the check was for the commission. In other words, he got a double receipt —a check and a receipt both.

Mr. Wilson: In this case he didn't get any.

Mr. Richardson: He wanted a check and a receipt. A poor girl he put in the middle—a girl out on Western Avenue—a building and loan—he tried to say he gave her money too. All of the sudden this fellow, who is a tight operator, in keeping his records in one or two instances he has been this way. There's one other statement—along the line I t[illegible] you—the affidavits of the son, which theoretically I know—

(Off the record conversation.)

Mr. Dewan: Well, I don't feel that a prolonged interrogation of Mr. Marzec is in order at this time. In fairness to you gentlemen, I think I should tell you that the evidence which we have in the files is somewhat, to say the least, in variance with some of the things you have said. Now I want to be certain that I understand your defense. So far, two names have been mentioned, Banach and Max Miller. Now you have stated that you

acknowledge three payments only from Banach, two by check and one not be check—

Mr. Richardson: That's the maximum—

Mr. Dewan: and I'm not too clear as to just what your contention is with reference to Miller—I didn't—I don't mean to ask for a detailed statement of background. If you desire to give it, we will be glad to receive it. What I am specifically interested in is what payments, either in number of transactions or dollars, or whatever information pertinent to that you wish to present. What's your position with reference to Max Miller?

Mr. Richardson: Arthur, it's a minor matter. He is entitled to have it cleared up.

Mr. Dewan: What's hazy in my mind is the defense.

Mr. Wilson: Here's what occurred: I attempted to find out if there were any omissions in receipts in Marzec's records and asked him with whom he did business. Max Miller was one of the names given. It was also pointed out not only did he do brokerage business between him and Max Miller, but also there were one or two joint ownership of properties, so their relationship was close. His—I go down on a Saturday morning, I think, meet Miller's accountant. We checked item by item the items reported by Marzec, the items appeared on Miller's books, and checked out the items and differences and took the differences up with Marzec, and he said if that's the way the records appeared, he would take the responsibility for those payments.

Mr. Dewan: And an amended return was filed?

Mr. Wilson: That's right.

Mr. Dewan: It's your position then—don't let me put words in your mouth—then the amended returns reflect the entire transactions with Marzec and Miller?

Mr. Richardson: That's right. I can bring Miller in to prove that.

(Off the record conversation.)

Mr. Dewan: Is it your position then that the amended return reflects the correct income for the year 1950?

Mr. Wilson: Substantially so.

Mr. Richardson: With these exceptions: We, first of all, will accept any statement of payments to Marzec by Miller, because we know they are true. The difference, when you talk about '50 is this: We say there may be some difference because some of the money given to Miller by Marzec (sic) it's not decided whether that should be applied to '48, '49, or '50. Wherever you decide to apply those is agreeable to us—it's a matter of accounting practice.

Mr. Dewan: Leaving out the question of the particular year to which a particular payment shall be applied, do you contend that the the amended return shows the aggregate of all unreported commissions received by Mr. Marzec from Mr. Miller?

Mr. Wilson: As far as we know.

Mr. Richardson: And we will accept—if there's any variance we will accept the statement of Mr. Miller. In other words, he gave us a copy of the statement.

Mr. Wilson: Our first concern in making the corrections each year must stand on its own. There's no criminal action if there's no tax due.

Mr. Dewan: Quite right. The only purpose in which I am—for which I'm asking these questions is to understand completely what your defense is. I want to understand it.

Mr. Richardson: That's right. We are better off if you do understand it.

Mr. Wilson: I want to point out this, or make this observation at this time. It's indicated by Mr. Dewan there are some facts he has in his possession we don't seem to be aware of. He didn't say that exactly, but that is what I have picked up from your last statement.

Mr. Dewan: Let me say this: What I want to do is get your complete—as much as you care to present—version of this situation, and after I have done that, I want to mention just one or two salient facts which we have at our disposal.

Mr. Richardson: And which we may be able to explain if you ask us.

Mr. Dewan: Now I might say that there are other mortgage brokers besides Max Miller and Henry Banach in this picture.

Mr. Richardson: That's true—that's true.

Mr. Dewan: Other mortgage brokers who have, during the years from 1948 through 1950, made commission payments to Mr. Marzec. Now do you care to make any comment there on that?

(Off the record conversation.)

Mr. Richardson: We admit there have, as far as your statement is concerned—yes, there are other brokers he has done business with.

Mr. Dewan: The indication in our files, from several of these sources commissions were received and not reported.

Mr. Richardson: Our position is where commission has been received from other brokers, it has been accounted for in the files. There might be a minor variation in there, but substantially there will be none, and we would very much love to see any evidence presented to us to show he got it.

Mr. Dewan: Just for the fun of it—do you know a man named—I'm not going to interrogate at this point—I'll mention one name—we have information showing payments by a J. Cutler Sheldon.

Mr. Richardson: Do you know a man by the name of J. Cutler Sheldon?

Mr. Marsec: Yes.

Mr. Richardson: How long have you known him?

Mr. Marsec: Several years.

Mr. Richardson: What is his business?

Mr. Marsec: An attorney.

Mr. Richardson: Licensed to practice law and practices downtown?

Mr. Marsec: I don't know.

Mr. Richardson: Have you at any time received any commissions for making loans?

Mr. Marsec: No.

Mr. Richardson: Did you ever aid or help him secure any loans?

Mr. Marsec: What do you mean by help secure?

Mr. Richardson: Just what I said. Did he ever discuss—

Mr. Marsec: In the natural course of business.

Mr. Wilson: In your position of mortgage clerk.

Mr. Richardson: He came to your place of business?

Mr. Marsec: Filed applications for loans or mailed them in by mail.

Mr. Richardson: And were these loans granted?

Mr. Marsec: Some cases.

Mr. Richardson: Sometimes were and sometimes not. Too, he gave you remuneration to help him secure these loans?

Mr. Marsec: No.

Mr. Richardson: That's all. Did you ever get a check for funds?

Mr. Marsec: No.

Mr. Richardson: That's all.

Mr. Wilson: I think there's a man by the name of Scott—

Mr. Dewan: Do you want to say anything about him?

Mr. Richardson: What's the name of Scott?

Mr. Marsec: Yes—he's a broker.

Mr. Richardson: With offices where?

Mr. Marsec: I don't know.

Mr. Richardson: Where did you meet him?

Mr. Marsec: He came to the office.

Mr. Richardson: He came to your place of business?

Mr. Marsec: That's right.

Mr. Richardson: He wanted to make loans?

Mr. Marsec: That's right.

Mr. Richardson: Did he file applications for loans?

Mr. Marsec: Yes.

Mr. Richardson: Were any applications filed favorably?

Mr. Marsec: That's right.

Mr. Richardson: Did he ever give you anything or pay you anything for help securing the loans?

Mr. Marsec: Nope.

Mr. Richardson: Were you in a position to do anything to warrant making payments?

Mr. Marsec: My position doesn't give me that authority. I'm servicing mortgages.

Mr. Richardson: So you not only received no monies for him, you were not in a position to receive any money?

Mr. Marsec: No.

Mr. Dewan: Anything else you gentlemen wish to present in that connection or in connection with any other brokers?

Mr. Richardson: May I ask this: You have brokers and he does admit he took money from. Is that so—he did

business with other men besides Marzec and Banach? The only thing we would say on certain of these fellows, he didn't receive money. In other words Miller and other brokers that paid him by check and he took it. All of a sudden he has always taken his commission in check form and put them on his books. The few who didn't want to pay him in check—

Mr. Dewan: Well gentlemen, are we—

Mr. Richardson: That's all we got to tell you. Anything you want to ask, just ask us.

Mr. Dewan: The other fact I want to mention is that we, as you probably have observed,—I have before me photostats of many checks. I wouldn't try to at this point—to total them, but they are numerous and they bear Mr. Marzec's endorsements either as payee or simply as an endorsement. I might say, superficially those signatures correspond to the acknowledged signatures of Mr. Marzec on the powers of attorney which he has executed, and they are consistent, as best I, who am not a handwriting expert, can determine, with each other.

Mr. Richardson: I might say in passing, there's one check, Mr. Marzec, there's one check you recall you cashed for a man at the bank—

Mr. Marzec: That was cashed by the—that's not material.

Mr. Wilson: It might be, except one thing, in the light of only one check as opposed to each of these sheets representing those attached and which—

Mr. Richardson: If so, if these checks you are talking about have to do with an accounting practice and were issued in due course of business—

Mr. Riewer: We not only have checks, but affidavits of people who wrote them, and are checks given to Marzec.

Mr. Richardson: With Marzec's signature on the checks

—if you have them, my man—he's hooked and on his way to the penitentiary, and I don't believe Marzec would sit here and tell me he didn't sign those checks if he did sign them. And if those fellows might have forged them—but if they are Marzec's signature, and signed them in due course of business, then Marzec is a bigger chump than I take him for.

Mr. Dewan: Just a minute. We have tried to be consistent throughout this proceeding. We have tried and are trying to hear anything pertinent to the issue that you care to present. We have—after you have presented this matter—we have tried to give you, without going into elaborate detail, basically what we have to work with. We have done that for the purpose so if you have anything pertinent to that, we will be glad to receive it and so we can appraise everything which is presented.

Mr. Richardson: May I make a statement. You have been very fair to me, and I have myself in a position where I want to hell a little because of your fairness. We here owe a lawyer's obligation to his client, and a lawyer's next obligation is to the public and to the court. I think there are times the reverse is true—a client has a certain obligation to his lawyer. I think the court has an obligation to its lawyers. The public has no obligations. I have heard a statement made here fairly by you people, honestly and sincerely trying to clarify any smoke in my mind, or your mind, or my client's mind, trying to arrive at a conclusion. I heard a statement made there were checks issued in the due course of business, signed by Marzec, which is contrary, unless it goes to Miller's account, because Miller's we do admit here, so Miller keeps a perfect record. There has never been financial difficulty between the two, but if there are any checks issued which are supposed to have Marzec' signature or issued in the

due course of business I would like to see one if possible, or two if possible, so I may question my client. And whether he ought to get new counsel—you see the position I am in. If you can do it without injuring your case—

Mr. Dewan: It is desirable for us to hear any matters between you and—

Mr. Richardson: I would like to know about it.

(Off the record conversation.)

Mr. Dewan: Let the record indicate that a number of checks—approximately four or five checks—more or less selected at random were exhibited to Mr. Marzec, Mr. Richardson, and Mr. Wilson for their inspection.

Mr. Richardson: I'll now—further affiant saith not.

Mr. Wilson: In the face of what we see there—

Mr. Dewan: May I add, these—the checks exhibited—were made out by—either by Mr. Banach or by Mary Banach—most by Mary Banach.

Mr. Richardson: Most were by Mary Banach.

Mr. Dewan: I believe you are right.

Mr. Wilson: Mr. Dewan, you know the Treasury Department set up is changing so rapidly, so that sometimes the tax practitioner is at a loss as to the step next to take and which makes his client's burden unbearable. What can we do towards getting a settlement with hopes of no prosecution for our client?

Mr. Richardson: Is that possible?

Mr. Dewan: I don't think I'm in a position to answer that question Mr. Wilson because—

Mr. Richardson: May I talk in lawyer talk—your position would be the equivalent of a Master in Chancery.

Mr. Dewan: I'll be very lawyer-like and answer this in an informal proceeding which varies by individual case. I don't know what to call it, but a conference—it's an opportunity for you to tell your story.

As far as suggesting or indicating what the next step may be, I must decline to do so. The—I repeat, as far as this office is concerned—as far as this whole contingency is concerned, the collection of taxes—none of those things have any bearing on our action. We are here only for one purpose—a case has been recommended for criminal prosecution—we want to hear the other side.

Mr. Richardson: In other words, you don't want to indict—

Mr. Dewan: We don't indict—

Mr. Wilson: You just forward it.

Mr. Richardson: That's—what we want to clarify is this: You changed your system here. The Revenue Department used to have these fellows and you could audit the State just like the SEC is patterned. You used to come here and go to a Hearing Officer and then he referred it to another man as here, but over here, what you are not going to do is indict people indiscriminately. You don't want an indictment on a man if after hearing a man you don't want an indictment. It's very niece of you people. It's altered my conception of the department considerably, and I can realize that this would be a good thing if they would do it in the criminal proceedings.

Mr. Dewan: Is there anything further?

Mr. Richardson: No, thank you.

(Conference concluded 12:08 P. M.)

COMPUTATION APPROVED
U. S. Treasury Department
Internal Revenue Service

U. S. INDIVIDUAL INCOME TAX RETURN

1950
CALENDAR YEAR

For other taxable years ending after Sept. 30, 1950, but before Dec. 31, 1951, attach Form 1040FY

EMPLOYEES: Instead of this form, you may use Form 1040A if your total income was less than $5,000, consisting wholly of wages shown on Forms W-2, or of such wages and not more than $100 of other wages, dividends, and interest.

Do not write in these spaces

Serial No. 316367

(Cashier's Stamp)

Name Joseph T. and Florence Marzec
(PLEASE PRINT first name of husband and wife if this is a joint return of husband and wife, the first names of both)

HOME ADDRESS 4182 W. Barry Avenue,
(PLEASE PRINT Street and number or rural route)

Chicago (City town or post office) 41 (Postal zone number) Illinois (State)

Social Security No. 323-07-5381 Occupation Acct.-Ins.

Your exemptions

1 List your own name
If married and your wife (or husband) had no income or if this is a joint return of husband and wife, list name of your wife (or husband)

List names of other close relatives (as defined in instructions) with 1950 gross income of less than $500 who received more than one-half of their support from you in 1950. If this is a joint return of husband and wife, list dependent relatives of both

Name (PLEASE PRINT)	Check below whether you (or your wife) were at the end of your taxable year— 65 OR OVER	BLIND	On lines a and b below— Write 1 if neither 65 nor blind. Write 2 if either 65 or blind. Write 3 if both 65 and blind
Your name .. Joseph T. Marzec	Yes ☐ No ☒	Yes ☐ No ☒	a. Number of exemptions for you .. 1
Wife's or husband's name .. Florence Marzec	Yes ☐ No ☒	Yes ☐ No ☒	b. Number of her (his) exemptions .. 1
Name of Other Dependent Relative	Relationship		Address—If different from yours
Thomas Marzec	Son		
Joseph Marzec	Son		
Robert Marzec	Son		

Enter here total number of exemptions claimed (yours and your wife's plus one for each dependent listed above) → 5

Your Income

2. Enter your total wages, salaries, bonuses, commissions, and other compensation received in 1950, BEFORE PAY-ROLL DEDUCTIONS for taxes dues, insurance, bonds, etc. Also enter amount of income tax withheld. Members of Armed Forces and persons claiming traveling or reimbursed expenses, see instructions.

Print Employer's Name	Where Employed (City and State)	Amount of Income Tax Withheld	Total Wages
		$	$
Polish Roman Catholic Union	Chicago, Ill.		3,010.00
	Enter totals...	$	$ 3,010.00

3. If you received dividends, interest, or any other income, give details on page 2 and enter the total here .. 21,871.79

4. Add income shown in items 2 and 3, and enter the total here .. $ 24,881.79

How to figure the tax

IF YOUR INCOME WAS LESS THAN $5,000.—Use the table on page 4 to find your tax—unless you itemize your deductions. This table allows about 10 percent of your total income for charitable contributions, interest, taxes, medical expenses, etc. If your deductions exceed 10 percent, it will usually be to your advantage to itemize them and compute your tax on page 3

IF INCOME WAS $5,000 OR MORE.—Do not use tax table. Compute tax on page 3. Use standard deduction or itemize deductions, whichever is to your advantage.

HUSBAND AND WIFE.—For split-income benefits, file a joint return. If filing separate returns and one itemizes deductions, both must itemize.

Tax due or refund

5. Enter your tax from table on page 4, or from line 18, page 3 .. $ 5,077.72

6. How much have you paid on your 1950 income tax?
(A) By tax withheld (in item 2, above). Attach Original Forms W-2.. $ None
(B) By payments on 1950 Declaration of Estimated Tax.. 2,800.00
Enter total here → 2,800.00

7. If your tax (item 5) is larger than payments (item 6), enter BALANCE OF TAX DUE here.. $ 2,277.72
This balance of tax due must be paid in full with return.

8. If your payments (item 6) are larger than your tax (item 5), enter the OVERPAYMENT here.. $ _____
Enter amount of item 8 you want: Refunded to you $.....; Credited on your 1951 estimated tax $.....
Do you owe any prior year Federal tax for which you have been billed? No (Yes or No)

If you filed a return for a prior year, state latest year 1949
Where filed Chicago
To which Collector's office did you pay amount claimed in item 6 (B), above? Chicago

County in which you reside Cook
Is your wife (or husband) making a separate return for 1950? No (Yes or No)
If "Yes," write her (or his) name ..

I declare under the penalties of perjury that this return (including any accompanying schedules and statements) has been examined by me and to the best of my knowledge and belief is a true, correct, and complete return.

(Signature of person, other than taxpayer, preparing this return) (Date)

(Name of firm or employer, if any)

Joseph T. Marzec 3-14-51
(Signature of taxpayer) (Date)

Florence T. Marzec 3-14-51
(Signature of taxpayer's wife or husband if this is a joint return) (Date)

To assure any benefits of split-income provisions, husband and wife must include all their income, and BOTH MUST SIGN, even though only one has income

SCHEDULE C (File with Form 1040) — **1950**

U. S. TREASURY DEPARTMENT
INTERNAL REVENUE SERVICE

SCHEDULE OF PROFIT (OR LOSS) FROM BUSINESS OR PROFESSION

(Farmers should obtain Form 1040F)

For Calendar Year 1950 or other taxable years ending after Sept. 30, 1950, but before Dec. 31, 1951

NAME AND ADDRESS ..... Joseph T. and Florence Marzec, 4182 W. Barry Ave.

State (1) nature of business ..... Insurance Broker and Accountant

(2) business name .....

(3) business address ..... 4182 W. Barry Ave., Chicago, Ill.

Do NOT include in this schedule cost of goods withdrawn for personal use or deductions not connected with your business or profession

1. Total receipts from business or profession		$36,991.31
COST OF GOODS SOLD		
2. Inventory at beginning of year	$	
3. Merchandise bought for manufacture or sale		
4. Cost of labor		
5. Material and supplies		
6. Other costs (explain in Schedule C-2)		
7. Total of lines 2 to 6	$	
8. Less inventory at end of year		
9. Net cost of goods sold (line 7 less line 8)		
10. Gross profit (line 1 less line 9)		$36,991.31
OTHER BUSINESS DEDUCTIONS		
11. Salaries and wages not included in line 4	$11,280.00	
12. Rent on business property		
13. Interest on business indebtedness		
14. Taxes on business and business property		
15. Losses of business property (attach statement)		
16. Bad debts arising from sales or services		
17. Depreciation and obsolescence (explain in Schedule C-1)	495.74	
18. Repairs (explain in Schedule C-2)		
19. Depletion of mines, oil and gas wells, timber, etc. (submit schedule)		
20. Amortization of emergency facilities (attach statement)		
21. Other business expenses (explain in Schedule C-2)	1,733.52	
22. Total of lines 11 to 21		13,509.26
23. Net profit (or loss) before net operating loss deduction (line 10 less line 22)		$23,482.05
24. Less net operating loss deduction (attach statement)		
25. Net profit (or loss). (Enter in Schedule C, page 2, Form 1040)		$23,482.05

Schedule C-1. EXPLANATION OF DEDUCTION FOR DEPRECIATION CLAIMED ON LINE 17

1. Kind of property (If buildings, state material of which constructed)	2. Date acquired	3. Cost or other basis (do not include land or other nondepreciable property)	4. Amount fully depreciated in use at end of year	5. Depreciation allowed (or allowable) in prior years	6. Remaining cost or other basis to be recovered	7. Estimated life used in computing this depreciation	8. Estimated remaining life from beginning of year	9. Depreciation allowable this year
		$	$	$	$			$
Buick Roadmaster	2-18 1949	3304.97		373.00	2391.88	5	3.10	660.99
			less 25% personal					165.25
								495.74

Schedule C-2. EXPLANATION OF LINES 8, 18, AND 21

1. Line No.	2. Explanation	3. Amount	1. Line No.	2. Explanation	3. Amount
21	License	$ 37.00	21	Car Parking	$ 37.65
21	Insurance	204.85	21	Telephone	72.85
21	Auto Repairs	418.79	21	Entertainment	594.93
21r	Car Wash	73.50	21	Advertising	112.49
21	Gas & Oil	215.10	21	Stationary	53.92
	~~25% Personal~~	~~949.24~~ 237.56	21	Legal	150.00
		711.68			1,733.52

AMENDED

INCOME TAX RETURN 1950

CALENDAR Year

For calendar year 1950, but before Dec. 31, 1951, attach Form 1040FY

Do not write in this space

JOSEPH T. and FLORENCE MARZEC

Collector's Stamp

4132 West Barry Avenue

Chicago 41, Illinois

323-07-5381 Accountant

Insur.-broker

List names of your close relatives (as defined in instructions) with 1950 gross income of less than $600 who received more than one half of their support from you in 1950. If none, write a joint return of husband and wife, list dependent relatives of both.

	Relationship	Yes / No	Yes / No	
Joseph T. Marzec		Yes ☐ No ☒	Yes ☐ No ☒	a. Number of exemptions to you 1
Florence "		Yes ☐ No ☒	Yes ☐ No ☒	b. Number of her/his exemptions 1
Thomas Marzec	Son			
Joseph "	"			
Robert "	"			

Your income

Enter number of your close relatives (as defined in instructions) with 1950 gross income of less than $600 who received more than one half of their support from you in 1950. If none, write a joint return of husband and wife, list dependent relatives of both. → 5

Enter amount of income tax withheld. Also enter amount of income tax withheld. Members of Armed Forces and persons claiming earned income credit, see instructions.

Name of employer (Number and street, city and State)	Amount of Income Tax Withheld	Total Wages
Polish Roman Cath. Union of America Chgo., Ill.,	$ None	$ 3,010.00
Enter totals	$ None	$ 3,010.00
3. If you received dividends, interest, or any other income, give details on page 2 and enter total here		65,583.42
4. Add items 2 and 3, and enter the total here		$ 68,593.42

How to find the tax

IF INCOME WAS $5000 OR MORE – Do not use tax table. Compute tax on page 3. Use standard deduction or itemize deductions, whichever is to your advantage.

HUSBAND AND WIFE – For split income benefits, file a joint return. If filing separate returns, and one itemizes deductions, both must itemize.

5. Enter tax from tax table (based on line 4), or from line 19, page 3 $ 26,551.12

6. Total amount paid with this return and by March 15 on this tax:

(A) By withholding (attach Original Forms W-2) $ None

(B) By payments on 1950 Declaration of Estimated Tax 5,077.72

enter total here → 5,077.72

Tax due or refund

7. If your tax (item 5) is larger than payments (item 6), enter BALANCE OF TAX DUE here $ 21,473.45

The balance of tax due must be paid in full with return.

8. If your payments (item 6) are larger than your tax (item 5), enter the OVERPAYMENT here $ _____

Enter amount of item 8 you wish refunded to you $ _____; Credited on your 1951 estimated tax $ _____

Do you owe any prior year Federal tax for which you have been billed? NO (Yes or No)

If you filed a return for a prior year, state latest year 1949

Where filed 1st Illinois

To which Collector's office did you pay amount you paid on your last return?

County in which you reside Cook

Is your wife (or husband) making a separate return for 1950? NO (Yes or No)

If "Yes," write her (or his) name _____

I declare under the penalties of perjury that this return (including any accompanying schedules and statements) has been examined by me and to the best of my knowledge and belief is a true, correct, and complete return.

6-8-51 (Date) — Joseph T. Marzec (Signature of taxpayer) — 6-8-51 (Date)

A. J. WILSON, C.P.A. (Name of firm or employee, if any) — Florence E. Marzec (Signature of taxpayer's wife or husband if this is a joint return) — (Date)

▷ To assure your benefits of split-income provisions, husband and wife must include all their income, and BOTH MUST SIGN, even though only one has earned income.

SCHEDULE C (File with Form 1040)
U. S. TREASURY DEPARTMENT
INTERNAL REVENUE SERVICE

1950

SCHEDULE OF PROFIT (OR LOSS) FROM BUSINESS OR PROFESSION

(Farmers should obtain Form 1040F)

For Calendar Year 1950 or other taxable years ending after Sept. 30, 1950, but before Dec. 31, 1951

NAME AND ADDRESS Joseph T. & Florence Harzec 4182 W. Parry Av.

State (1) nature of business Accountant & Insurance Broker

(2) business name

(3) business address 4182 W. Parry Ave. Chicago, Illinois

Do NOT include in this schedule cost of goods withdrawn for personal use or deductions not connected with your business or profession

1. Total receipts from business or profession			$38,991.31
COST OF GOODS SOLD			
2. Inventory at beginning of year	$		
3. Merchandise bought for manufacture or sale			
4. Cost of labor			
5. Material and supplies			
6. Other costs (explain in Schedule C 2)			
7. Total of lines 2 to 6	$		
8. Less inventory at end of year			
9. Net cost of goods sold (line 7 less line 8)			
10. Gross profit (line 1 less line 9)			$38,991.31
OTHER BUSINESS DEDUCTIONS			
11. Salaries and wages not included in line 4	$11,220.-		
12. Rent on business property			
13. Interest on business indebtedness			
14. Taxes on business and business property			
15. Losses of business property (attach statement)			
16. Bad debts arising from sales or services			
17. Depreciation and obsolescence (explain in Schedule C 1)	495.74		
18. Depletion (explain in Schedule C 2)			
19. Depletion of mines, oil and gas wells, timber, etc. (submit schedule)			
20. Amortization of emergency facilities (attach statement)			
21. Other business expenses (explain in Schedule C 2)	1,733.77		
22. Total of lines 11 to 21			13,509.51
23. Net profit or loss (before net operating loss deduction) (line 10 less line 22)			25,481.80
24. Less net operating loss deduction (attach statement)			-
25. Net profit or loss (enter on line 4, page 1, Form 1040)			$25,481.80

Schedule C 1. EXPLANATION OF DEDUCTION FOR DEPRECIATION CLAIMED ON LINE 17

Kind of property (If building, describe construction)	2. Date acquired	3. Cost or other basis (do not use cost of other depreciable property)	4. Assets fully depreciated in use at end of year	5. Depreciation allowed or allowable in prior years	6. Depreciation cost or other basis to be recovered	7. Estimated life used to compute allowance for depreciation	8. Estimated remaining life from beginning of year	9. Depreciation allowable this year
Office equipment 20%		$ 2,391.83	-	$ 373.-	$ 2391.83	5yr	3 2	$ 660.92
							10/12	155.25
Less 25% personal								495.74

Schedule C 2. EXPLANATION OF LINES 6, 18, AND 21

Line No.	2. Explanation	3. Amount	Line No.	2. Explanation	3. Amount
6	Auto Insurance	$ 37.-	21	Parking	$ 37.65
	Gasoline	20.31		Telephone	72.35
	Repairs	142.70		Entertainment	504.03
	Tires	23.50		Advertising	112.49
	Misc.	21.10		Stationery	53.22
		243.61		Total	156.09
	Less 25% personal	60.91			1,233.77
		182.70			

$ 3111 19 Walnut St 18.000 C. 10 of 48. for identification

6625 2 Wood

5612 S. Prospect 13,500 - FAB - BRUNO - STK P

H Old Lot 6 of Hammond 35.000 - C

6401 Parnell 35,000 C

N. F. Lot Division Rd 67 500 C

30* + Penn St 67500 70,000 T.

X 1429-35 E. Marquette Rd 66 000 - BRUNO - FD. B.

X 5300 Dorchester Ave 75.000 FAB - STK JNO - STK P

X D.E. Lot 13* + Orchard 30.000 +

13357 W. Edsen St 8 000 - T

X 3359 W. Edsen St 35.000 - T

X 1128 E 64* St 40.000 - C

X 16 75 000 - C

1 N. 37.000 - C

8 C

B 6 Hob. Otis 70 000 - FAB - BRUNO STK. P

71 C

C

C

7471 C

5454 Kimbark 55 000 T

6000 Normal 3.500 FAB STK Room P

(00) Emmer C

3126 49.500

B 150 Marquette 57 000 - FAB - BRUNO STK

C

C

4543 C

3200 Cb 55.000 - FAB - BRUNO P

5344 Lamont 37 500 - FAB STK BRUNO P

4644 Ellis Ave 70.000 - BRUNO STK KAB P

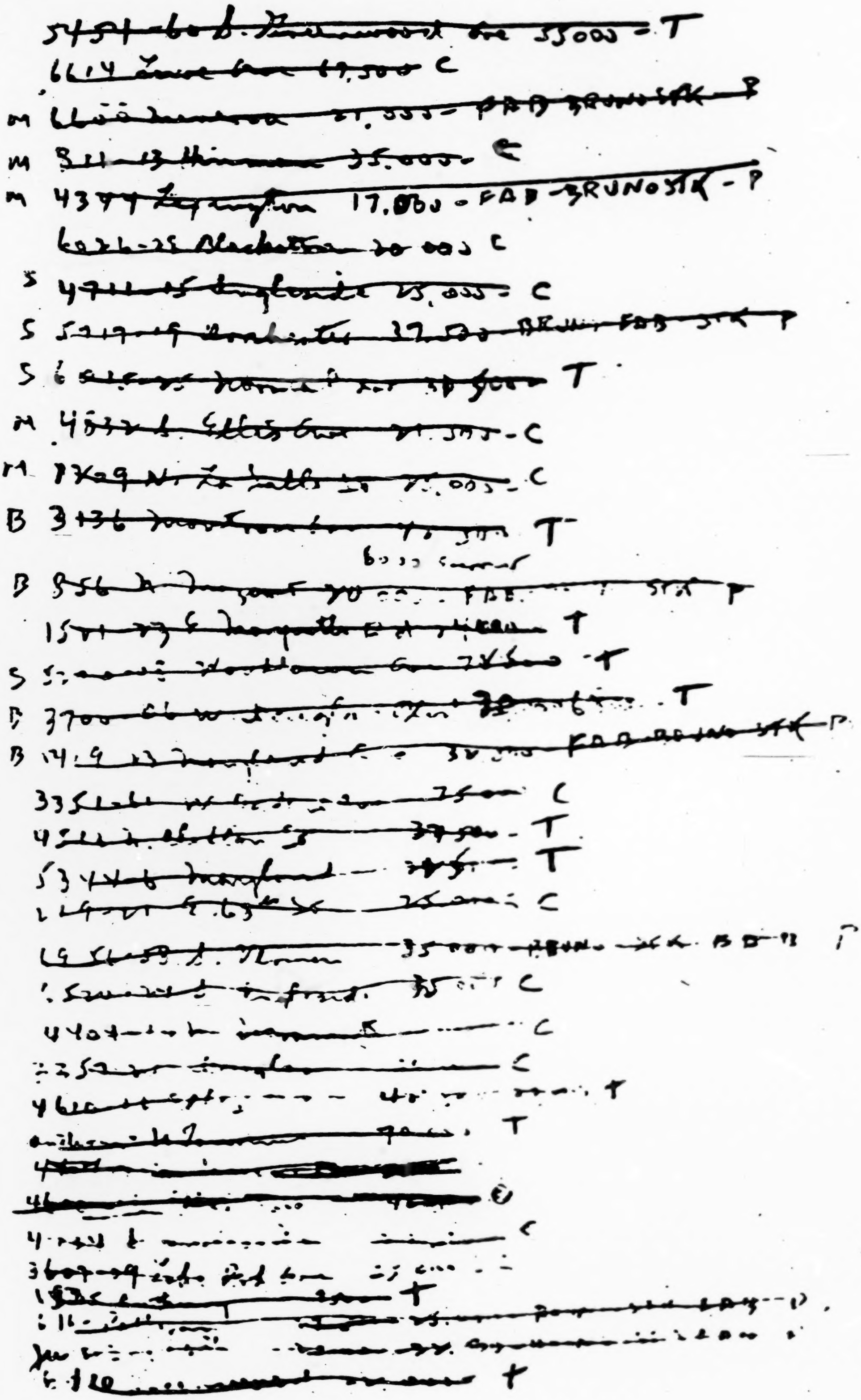
Normal Anthony 9 000 6

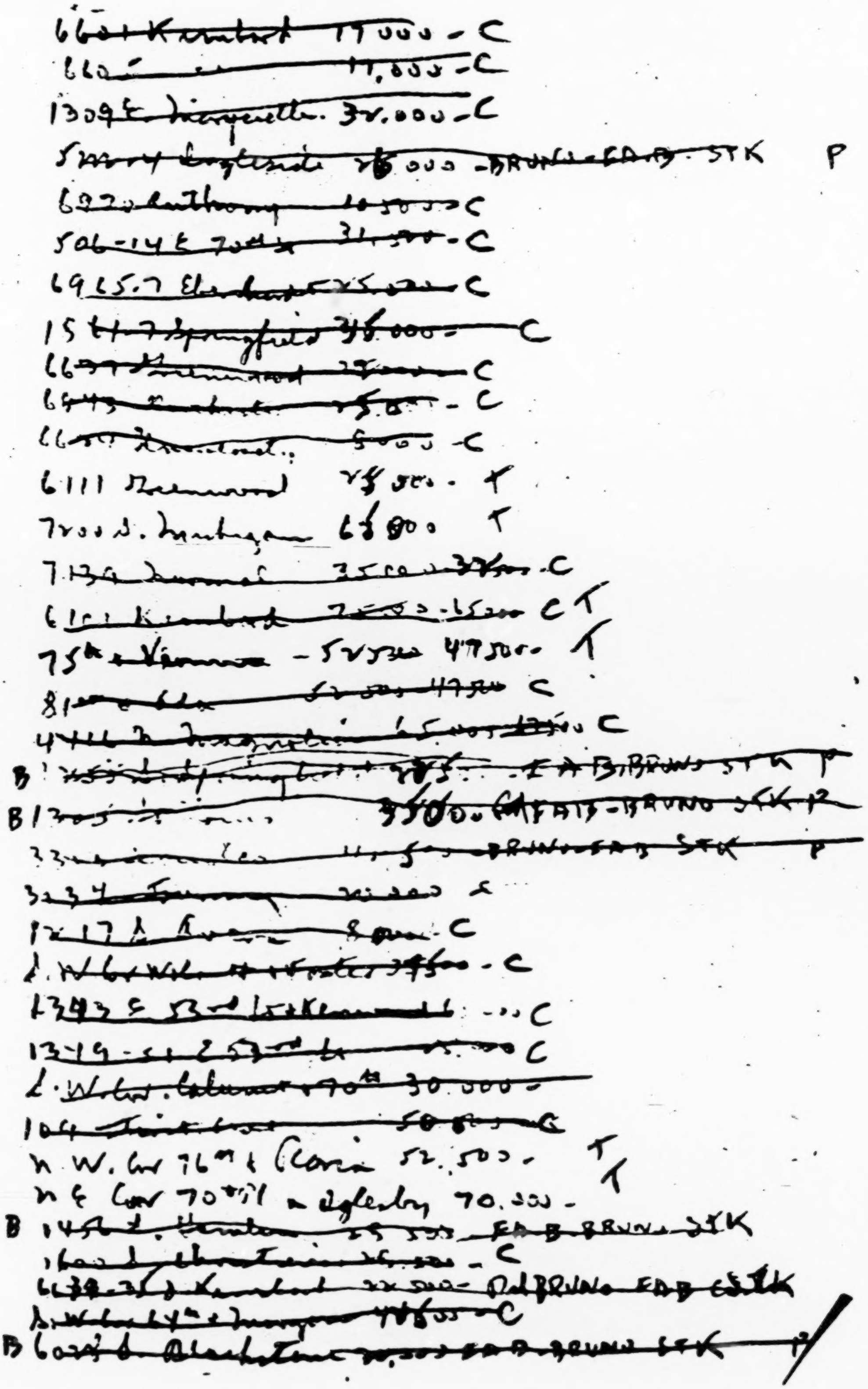
6835 FAB STK

6110 Kimbark

M 1405 E. 63rd St 10 000 - FAB - BRUNO P

6335 Kimbark 10 000 - FAB - BRUNO





5335.44 [illegible] 37.500.
3001-03 Logan Blvd $8,000 - FAB-BRUNO
2[illegible] 47,500 - BRUNO-FAB-STK
B 2n. S. Cor Springfield & Archer 30,000-FAB-BRUNO F
1431 [illegible] C
1[illegible] C
4116-18 Malden 25,000 - FAB-BRUNO
AE North Shore & Lakewood 45,000 - OM FAB-BRUNO
1422 [illegible] C
DB Wilcox Spring & 14th 35,000 - FAB-BRUNO F
7[illegible] C
66th & Kenilworth 70,000 - Sold FDB-BRUNO
[illegible] C
3901 Flournoy 3[illegible] - FAB-BRUNO
300-10 E 61st [illegible] - FAB-BRUNO-STK
6256-60 [illegible] BRUNO-FAB-STK
6[illegible] C
4713 [illegible] C
3400 S Keeler Blvd 10,000 - C
4[illegible] C
[illegible] C
1531-33 E. 65th St. 25,000 - FAB-BRUNO
[illegible] C
5147 [illegible] C
3433 Douglas Blvd 15,000 - Cutler
4701 Malden 25,000 - FAB-BRUNO
1526 [illegible] 25,000 - FAB
1[illegible] C
1301 S. Avers Ave 26,000 - BRUNO-FAB

[redacted]

[illegible] P
[illegible] C
[illegible] P
[illegible] C
[illegible] STK P
[illegible] C
[illegible] P
[illegible] P
[illegible] C
[illegible] C
[illegible] T
[illegible] P
[illegible] T
[illegible] C
[illegible] T
[illegible] P
[illegible] T
[illegible] C
[illegible] P
[illegible] T
[illegible] T
[illegible] C
[illegible] C
[illegible] T
[illegible] ?
[illegible] T
[illegible] P
[illegible] T
[illegible] C
[illegible] P
[illegible] C
[illegible] C
[illegible] C
[illegible] C
[illegible] C
[illegible] C

[illegible]

E. Cor 13th & Cedar 30 000 - [illegible]

3357 W. Adams St [illegible] - FHA - BRICK

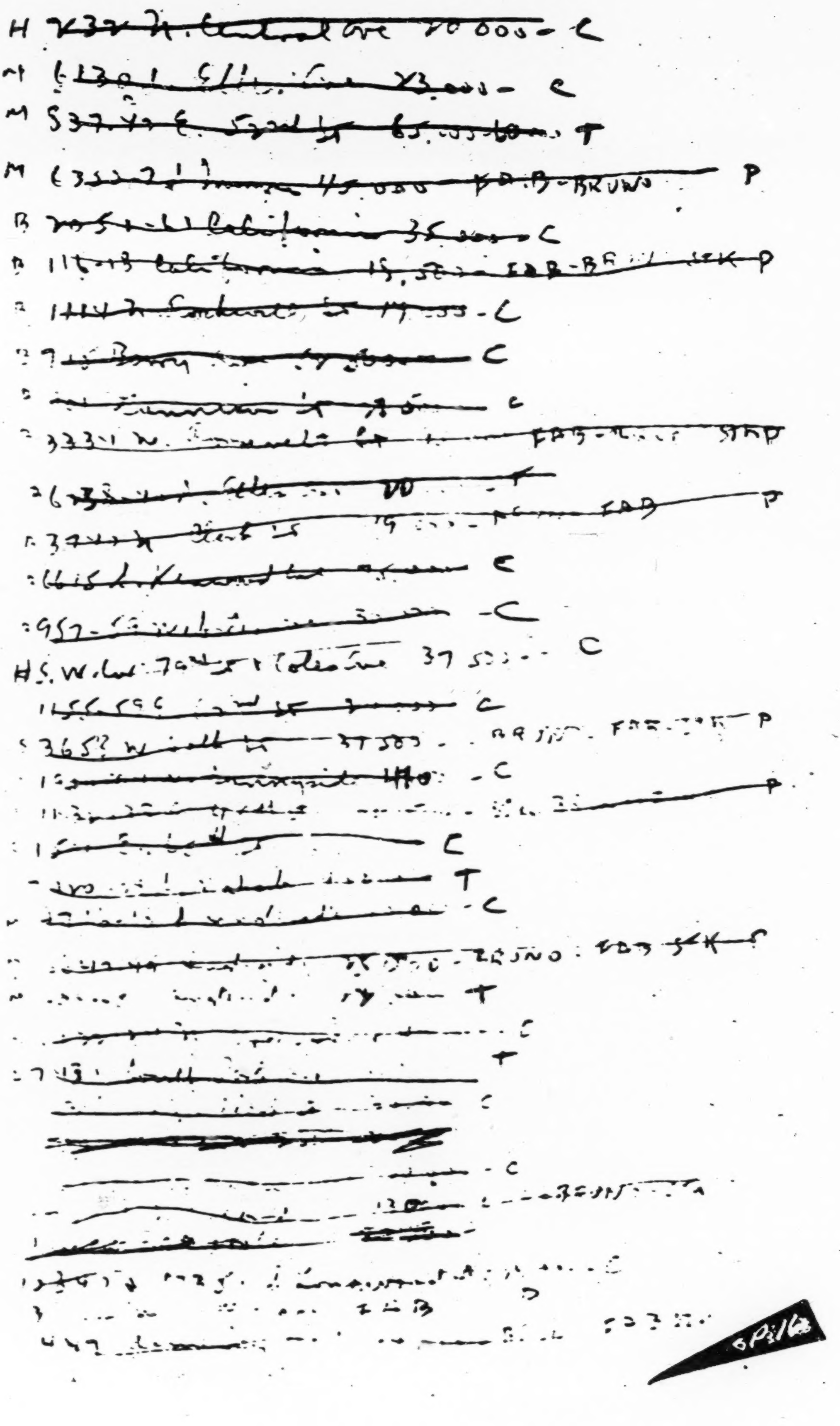
3359 W. Adams St 3[illegible] - FHA - BRICK

5454 Kimbark Ave 53,000 - FHA - BRICK

[illegible]

[illegible]

[illegible]



LIBRARY
SUPREME COURT, U. S.

FILED
FEB 6 1958
JOHN T. FEY, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1957.

No. 772

JOSEPH T. MARZEC,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

ELLIS N. SLACK,
Shoreham Building,
Washington, D. C.,

JOSEPH A. STRUETT,
105 West Madison Street,
Chicago 3, Illinois,
Counsel for Petitioner.

INDEX.

	PAGE
Opinion below	1
Jurisdiction	1
Questions presented	2
Statute involved	3
Statement	4-25
Reasons for granting the writ	26-30
Conclusion	31
Appendix	33-61
A. The Opinion of the Court below	33-38
B. The Conspiracy	39-56
C. The "Corrupt Record"	57-61

CITATIONS.

Cases.

Adamson v. California, 332 U. S. 19	29
Abbott v. Com'r, 30 B. T. A. 227	22
Alford v. United States, 282 U. S. 687	21
Avery v. Alabama, 308 U. S. 444, 446	12
Bartholomew v. Com'r (C. A. 8), 186 F. 2d 315	22
Berger v. United States, 255 U. S. 22, 33	24
Berger v. United States, 295 U.S. 78, 88	16
Brady v. Com'r, 25 T. C. 682	22
Communist Party v. Subversive Activities Control Board, 351 U.S. 115	5
Estate of Koen v. Com'r, 14 T. C. 1406	22
Hawk v. Olson, 326 U. S. 271, 278	29

Healy v. United States (C. A. 9), 186 F. 2d 164 26
Holland v. United States, 348 U. S. 121 8
Jencks v. United States, 356 U. S. 667 .....20, App. 41
Johnson v. Herbst, 304 U. S. 458, 463 29
Lovely v. United States (C. A. 4), 169 F. 2d 386 27
Mesarosh v. United States, 352 U. S. 1, 14 29
Morgan v. United States, 304 U. S. 1 16
Olender v. United States (C. A. 9), 210 F. 2d 795 19
Powell v. Alabama, 287 U. S. 45, 49 29
Roche v. Evaporated Milk Ass'n, 319 U. S. 21 7
Russell v. United States (C. A. 6), 12 F. 2d 683 26
Singer v. United States (C. A. 3), 58 F. 2d 74 19
Steele v. United States (C. A. 5), 222 F. 2d 628 19
Tatum v. United States (C. A. D. C.), 190 F. 2d 612 .. 22
United States v. Altruda (C. A. 2), 225 F. 2d 935..... 19
United States v. Glasser, 315 U. S. 60 29
United States v. Indian Trailer Corporation (C. A. 7), 226 F. 2d 595 23
United States v. Killian (C. A. 7), 246 F. 2d 77 20
United States v. Koplin (C. A. 7), 227 F. 2d 80 29
United States v. Kretzke, 350 U. S. 807, rev'g. 220 F. 2d 785 21
United States v. Levy (C. A. 3), 153 F. 2d 995 26
United States ex rel. Montgomery v. Ragen (N. D. Ill.), 86 F. Supp. 382 30
United States v. Morgan, 304 U. S. 1 15
United States v. O'Connor (C. A. 2), 237 F. 2d 466 .. 19
United States v. Pardue (S. D. Tex.), 294 Fed. 543 30
United States v. Phillips (C. A. 7), 217 F. 2d 435 22
United States v. Reynolds, 345 U. S. 1, 12 16

United States v. Shotwell Mfg. Co., ... U. S. 5, 7, 22
United States v. Harold Sullivan, et al., 57 CR 149..App. 40
United States v. Ward (C. A. 3), 169 F. 2d 460 19
Whiskey Cases, 99 U. S. 594 .....2, 26, 27
Wilkes v. United States (C. A. 9), 80 F. 2d 285 19

Statutes, etc.

U. S. Const., Amend. 6 28
I. R. C. (1939) § 145b 3
I. R. C. (1939) § 3979(a) 22
Federal Probation Act (18 U. S. C. § 3651).....26, App. 34

IN THE

Supreme Court of the United States

OCTOBER TERM, 1957.

No.

JOSEPH T. MARZEC,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

Petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Seventh Circuit affirming petitioner's conviction under Section 145(b) of the Internal Revenue Code of 1939.

OPINION BELOW.

The opinion of the Court of Appeals is not yet officially reported and is printed herein, Appendix A, *infra,* pp. 33-39.

JURISDICTION.

The judgment of the Court of Appeals was entered on December 13, 1957. The time for filing this petition was

extended to and including February 10, 1958, by an order of Mr. Justice Clark dated January 3, 1958. The jurisdiction of this Court is invoked under 28 U. S. C. § 1254.

QUESTIONS PRESENTED.

1. Whether petitioner, as an accomplice, acquired an equitable right to immunity from prosecution by supplying evidence to the Government and testimony as a witness for the Government against his confederates of equal or greater guilt.

2. Whether the enactment of the Federal Probation Act abolished the equitable rights of an accomplice—as defined by this Court in *The Whiskey Cases,* 99 U. S. 594.

3. Whether it is consistent with the basic concepts of fair play, our canons of decency and fairness, and due process, that such an accomplice, after having been denied such rights and then convicted by a jury, should receive a sentence far more severe than that imposed upon any of said confederates who pled guilty—even though they could not have been prosecuted or convicted if it had not been for his cooperation and testimony.

4. Whether petitioner was deprived of the assistance of counsel by being forced to trial with counsel who was unprepared.

5. Whether petitioner was accorded a fair trial.

6. Whether the facts of this case establish a flagrant denial of due process from the time of its investigation up to and including its disposition by the trial court.

7. Whether the court below properly and adequately disposed of this case.

STATUTE INVOLVED.

Internal Revenue Code of 1939, Section 145(b); 53 Stat. 62 (1939), 26 U. S. C. 145(b) (1952 Ed.).

* * * * *

(b) Failure to Collect and Pay Over Tax, or Attempt to Defeat or Evade Tax. Any person required under this chapter to collect, account for, and pay over any tax imposed by this chapter, who willfully fails to collect or truthfully account for and pay over such tax, and any person who willfully attempts in any manner to evade or defeat any tax imposed by this chapter or the payment thereof, shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, be fined not more than $10,000, or imprisoned for not more than five years, or both, together with the costs of prosecution.

* * * * *

STATEMENT.

THE PROCEEDINGS.

This case was commenced on December 15, 1955, by the return of an indictment against Frank A. Brandt, Stanley T. Kusper, Bruno J. Sobieraj, and the petitioner, Joseph T. Marzec. Each defendant was charged with attempting to evade and defeat his individual income taxes for the years 1949 and 1950 by the filing of false and fraudulent income tax returns for said years. Counts one and two related to Brandt; counts three and four to Kusper; counts five and six to Sobieraj; and counts seven and eight to Marzec (A. 1). Motions for severance and for separate trials were filed by each defendant and were denied by the trial court (A. 13).[1]

On January 18, 1957, Sobieraj withdrew his plea of not guilty as to count five, and entered a plea of guilty to said count, and count six of said indictment was dismissed (A. 2). On February 21, 1957, he was sentenced to one year's imprisonment, which sentence was suspended and he was placed on probation (A. 302).

On January 29, 1957, Brandt withdrew his plea of not guilty as to count one, and entered a plea of guilty

1. In the proceeding below, petitioner filed an Appendix designated "Appendix to Defendant-Appellant's Brief," the Government filed an additional Appendix designated "Appellee's Appendix".

These two appendices have been certified to this Court in accordance with Rule 21(3). Page references to petitioner's appendix below will be made in the following manner: (A. ....). Page references to the Government's appendix below will be designated (G. A. ....). The proceedings of February 21, 1957, when Brandt, Sobieraj, and Marzec were sentenced, was not printed in either appendix but were part of the record in the court below. A certified copy of such proceedings has been procured and lodged with the Clerk of this Court.

to said count, and count two of said indictment was dismissed. On February 21, 1957, he was sentenced to one year's imprisonment (A. 301).

On February 18, 1957, on motion of the Government, the indictment was dismissed as to the defendant Kusper for lack of sufficient evidence (A. 297-8).

After a jury trial, petitioner was found guilty and on February 21, 1957 was sentenced to three years' imprisonment on each count, the sentences to run concurrently, and was denied probation (A. 305, 306).

THE OPINION OF THE COURT BELOW.

The opinion of the court below is so lacking in factual matter and legal analysis that it fails to give an accurate picture of what this case is about. It loses sight of the substantial questions involved and their impact upon the proper administration of justice in Federal Courts.[2]

---

2. The situation here would seem incredible. Among other things, our law enforcement officers first availed themselves of Marzec, the employee, to bring his three superiors to the bar of justice for the evasion of their taxes. They then abandoned Marzec and used his prosecution to benefit these other three in their tax difficulties, poisoning and polluting the waters of justice, making a mockery of our administrative and judicial processes, and reflecting upon the integrity of their own Government.

Once they abandoned petitioner, they took every conceivable unfair advantage of him and his counsel, though the doing of justice must be "made so manifest that only irrational or perverse claims of its disregard can be asserted", *Communist Party* v. *Subversive Activities Control Board*, 351 U. S. 115, 124.

There is much analogy between the facts and issues recently considered by this Court in the case of *United States* v. *Shotwell Manufacturing Company*, ... U. S. ...., and the more varied, novel, and serious ones here. The Government there sought the required relief. Since justice is not a one way street, petitioner here seeks relief, it having been denied in the court below.

Situations such as these, which were approved by the court below, strike at the very foundation of our System of Jurisprudence, thus commanding themselves to the broad supervisory authority of this Court. As this Court has emphasized, they are not to be treated lightly, as the court below would have us believe,

Influenced by its conclusions that counsel for the defendant, Joseph A. Struett, informed it, the trial court and the jury, that his client "was guilty" and that the "defendant's evidence alone proved that he was guilty," the court below obviously concluded that all of petitioners' contentions were specious and that they required no factual, and little, if any, legal consideration. The facts recited by the court below are so incomplete and inaccurate that when implemented by other pertinent facts they not only fail to support the court's conclusions, but establish just the contrary.[3]

Most of petitioner's contentions and particularly those involving "the integrity of a criminal trial in the federal courts"; the integrity of our administrative and judicial processes and due process were all "resolved", by conclusions of the court below that they were without foundation, had no record support, and/or that the record establishes just the contrary. Such consideration, treatment, and disposition of contentions of this character were wholly inadequate and improper. *United States* v.

---

but are to be resolved only after most careful, cautious, and full factual and legal analysis. As this analysis is made, due consideration will be given to the varied contentions of the Government and the conclusions of the court below. Such matters will be then and there resolved, to avoid repetitious argument later. In undertaking this task, due deference will be given to Rule 23 § 1a and 4 of this Court.

3. To illustrate; the court below questions the sincerity of Marzec and denies him the right to immunity because he did "absolutely nothing" to protect it during the long pendency of this case prior to the agreed trial date. No mention is made in its opinion (1) that the Government admittedly had full knowledge of this asserted right during the long pendency of this case; (2) that it first came forward, questioned and denied Marzec's right on January 23, 1957; (3) that this occurred just twelve days before the set joint trial date of February 4, 1957 for all four defendants—in fact the joint trial date of the other three since Marzec was a required witness against them; (4) that the Government then had no further use for Marzec or his trial testimony; and (5) that six days thereafter, on January 29, 1957, Marzec took adequate steps to protect said right.

Shotwell Manufacturing Company, ... U. S. .... , decided December 16, 1957 and referred to herein as the *Shotwell* case.

The Government and the trial court apparently proceeded on the theory that since petitioner had admitted his "guilt" he was duty bound to plead guilty, and, when he did not, they could deal with him as they desired and could justify their acts by the course of conduct petitioner and his counsel pursued. The court below approved their acts on much the same theory. The fact that petitioner's counsel forthrightly informed all of them of the true facts and that petitioner at his trial testified truthfully, not sparing himself, was to his credit and merits comparison with the tactics of the Government. These facts did not furnish excuse for or justification of the action of the trial court, and in turn the court below, in denying to petitioner the basic rights of every defendant in a criminal case.

Petitioner's "equitable title to mercy" was founded upon his full and fair disclosure of all the facts. He asserted that right and sought to protect it before the trial date by a motion to continue his trial. When that motion was denied, the only way to protect it was to stand trial and appeal, if convicted. *Roche* v. *Evaporated Milk Ass'n.*, 319 U. S. 21. Petitioner did not first inform, disclose, and admit to the Government; then, when turned upon, claim his "innocence" and deny his "guilt". The Government first said that petitioner was a mere employee and collector (G. A. 60). Then, when it turned on him, it said that it honestly did not know who was the dominant party, Marzec, or Brandt the Treasurer (Proceedings at time of sentence).

Petitioner, and even those guilty of the most heinous of offenses, are not to be denied due process; nor put to trial if equity and law require otherwise. They have a con-

stitutional right to have a jury determine their guilt or innocence; and to be represented by prepared and effective counsel at their trial. Moreover, they are to be accorded a fair trial by an impartial judge and are not to be convicted on a "corrupt record." If convicted, they are not to be given a sentence of such severity that it, together with other circumstances, might give "fair support" to the charge that they had been denied any of these rights or were being punished for having availed themselves of their right to a trial by jury. It is the duty of our law enforcement officers and our courts to make certain that all such persons have received and that they do receive "Equal Justice Under Law," the minimum requirements of due process.

IMMUNITY.

Petitioner Marzec was a clerical employee of a fraternal union making loans on real estate through brokers. He also was the collector of "kick-back" commissions, usually four percent of the face value of the loan, which these brokers were required to pay before their loans would be approved. These commissions were usually paid to him in cash, cashier's checks, or checks to cash, and are referred to herein as "cash commissions." Marzec, in turn, after retaining his one-fourth share, distributed the balance secretly and equally to Brandt, the Treasurer of said union, Sobieraj, the "independent appraiser" of the property securing said loans, and Kusper, the General Counsel of said union, who had the responsibility for the making and approving of said loans (G. A. 60-61). None of these persons reported the receipt of such commissions in their individual income tax returns. This was the joint venture charged in the indictment referred to in the opinion of the court below. The unreported income charged against each

defendant was only his *respective distributive share* of said cash commissions.[4]

The investigating agents sought to and did charge against Marzec all criminal and civil income tax liability for all said commissions so collected, recommended only his prosecution, and obtained from the other defendants affidavits to the effect that they had not shared in said cash commissions. This action and results may have been but a part and parcel of a criminal conspiracy to obstruct justice, to frame Marzec, and to exculpate these other three, with a twelve-flat building as the pay-off. A statement of this character should be, as any conspiracy must be, substantiated by overall facts supported by many detailed facts. Such facts appear in Appendix B, *infra* pp. 39-56.[5]

---

4. This overall picture appears, from the Government's answer to the motion of all defendants for a severance (A. 8, Petitioner's Appendix 8); its answer to the motions of other defendants for bills of particulars (G. A. 74-77); the arguments of the Government relative thereto (G. A. 60, 68); and the trial testimony of Government witnesses and of Marzec.

There were some variations of the above picture. When checks were received by Marzec, he gave Sobieraj and Kusper their share by checks payable to them *or* in the case of Sobieraj sometimes payable to a partnership he had with his mother in law; and in the case of Kusper mostly payable to B. Repsuk (Kusper spelled backwards; Blanche was his wife's first name). Such payments were reported by Marzec, Sobieraj and Kusper, and were not involved in the charges of the indictment.

Brandt always received as his share one percent, or one point, and always in cash. The charges in the indictment against Brandt covered all the commissions received by him since he had not reported any of them. As to Kusper, Sobieraj, and Marzec, it covered only those commissions which were paid in cash since, as shown above, they had reported the payments received by check.

If Marzec received five percent (these were mostly check payments), he kept two percent and distributed the other three percent among the other three. If he received three percent, or three points. Brandt received his one percent and the other two percent was divided among the other three. Kusper received a little less than his usual share on the loans made by two brokers.

5. As a part of said conspiracy, petitioner was induced to deny to the investigating agents the receipt of these cash commis-

Petitioner discovered the above in September of 1953, when his case was in the United States Attorney's office for indictment. With benefit of new counsel, Mr. Rieger and Mr. Struett, he shortly thereafter advised the United States Attorney and representatives of the Bureau that there were others of far greater guilt involved, whose prosecution might well have been stifled, and offered under proper circumstances tc admit his own culpability, fully disclose, and furnish required information, cooperation, and testimony against these others.

Representatives of the Bureau—though they no longer had jurisdiction of his case—opposed Marzec's offer. They consistently asserted that they would not consent to the granting of immunity to Marzec; that they had obtained affidavits from these other three that they had not shared in these cash commissions; and that they would not investigate further.[6] The Government, however, availed itself of Marzec's offered cooperation and testimony early in 1955 (A. 215-216), and thereafter, which resulted in the return of the indictment in question. Marzec was always ready and willing to testify against the others at their trial.[7]

---

sions by the other defendants and his selected representatives on their false assurances that they would settle this case and pay the bill. He did so deny their receipt. The Government, to establish wilfullness, offered evidence of such denial (G. A. 265). It was petitioner's position before the trial court and the court below that to refute such evidence of wilfullness he had a right to fully develop and introduce in evidence the existence of this alleged conspiracy and that once he was freed from same, he fully admitted, disclosed, and cooperated with the Government. This the trial court refused to permit him to do (G. A. 380).

6. All of such opposition, relied upon in part by the court below to reject Marzec's asserted right to immunity, might well have been but further steps in this conspiracy since, without Marzec and his testimony, the prosecution of the others would have remained stifled.

7. These facts were fully stated in petitioner's motion, filed January 29, 1957, to vacate the order of the trial judge entered on

It is admitted fact that without Marzec's cooperation and testimony, the Government would not have been able to indict the other three defendants and to successfully prosecute two of them, Sobieraj and Brandt. At the time petitioner was sentenced, the Government grudgingly admitted: "I think it is true that if Mr. Struett had not come voluntarily to our office it is doubtful if indictments against the other three could have been returned • • • ", " • • • In effect, it was Marzec only who could have put the cash sums in the hands of the other three defendants. He did certainly give evidence to the Grand Jury, essen-

---

January 23, 1957, setting his case for trial on February 4, 1957, and for a continuance of the trial date awaiting executive clemency or dismissal, and in the alternative, for a motion for a continuance of the trial date to the October, 1957 term of court, (petitioner's counsel was to be out of the country on a World Cruise from about April 1 to July 1, 1957, of which fact the Government admittedly had knowledge from September of 1956) to enable petitioner's counsel to prepare preliminary motions on his behalf and to prepare for trial if they were denied (A. 28-88). This verified motion is often referred to herein. These facts were not denied in the Government's answer to said motion (A. 80-86).

These same facts often appear in one form or another in the offered or received evidence at the trial. The trial court refused to permit Marzec as part of his case to show anything beyond the time his case was referred to the Department of Justice in September of 1952 (G. A. 380), and kept practically all of these facts out of evidence. They were covered by many offers of proof (G. A. 292; 371-381; A. 212-217, Offered testimony of Mr. Rieger, one of petitioner's counsel; A. 228-233, Offered testimony of petitioner's accountant).

The Government then did an about face and cross examined Marzec on the subsequent events, thus opening up the entire matter. As a result, some of the facts got into evidence. but only in a haphazard and derogatory way in so far as Marzec was concerned. The trial court still refused to admit many of the facts in evidence, and particularly the documents Marzec had prepared for the use of the Government. This phase of the case is fully covered in petitioner's motion for a new trial (A. 283-286).

As this Court can well appreciate, if petitioner was subjected to a trial by an over-zealous prosecutor and a partial judge, with his counsel unprepared, the result would have to be a poor trial record, most difficult to follow, and with every conceivable kind of error.

tial evidence to indicate the financial payments to the other three * * * " (Proceedings of February 21, 1957, pp. 26-27).

THE DENIAL OF ASSISTANCE OF COUNSEL.

The court below relied upon the fact that the indictment in this case was returned on December 15, 1955, that it was pending some fourteen months, and that on December 5, 1956, by agreement, this case had been specifically set for trial on February 4, 1957, to reject petitioner's contention that he was forced to trial on February 4, 1957, without benefit of prepared counsel.[8]

The court omits from its opinion most of the pertinent facts. During the pendency of this case Marzec was kept joined with these other defendants even though he was a necessary Government witness against them.

On January 23, 1957—twelve days before the joint trial date—the Government for the first time in an admitted "drastic change" of position (A. 19) came forward and made its true intentions as to Marzec "crystal clear." It then, by way of an unverified motion and in open court, first turned on Marzec, denied any deal with him, questioned his asserted right to immunity, of which it had knowledge as far back as November 8, 1954, sought a severance as to him, and sought to try him before Brandt and Kusper. It sought to try petitioner on February 4, 1957, well knowing his counsel had made no preparation for trial and was unprepared, and after it had continuously concealed from and refused to disclose to petitioner's counsel its true intentions as to how it intended to proceed with all defendants joined. These acts took place after: (1)

8. The trial court—as did the court below—disposed of this matter on a clockwise basis, rather than in the light of the facts and conditions existing as of January 23, 1957 (*Avery* v. *Alabama*, 308 U. S. 444, 446).

it had obtained a plea of guilty from Sobieraj; (2) had been assured of a plea of guilty from Brandt; (3) had probably determined to dismiss Kusper; (4) had received the full benefit of Marzec, his cooperation and Grand Jury testimony; and (5) after it had no further use for Marzec, his counsel or his trial testimony. Its statement that it intended to try Brandt and Kusper after Marzec was a sham in that there was to be no one else to try, as subsequent events proved.[9]

The trial court refused to permit petitioner's counsel to answer said petition as is required by Court Rules (A. 29) and set petitioner's case for trial on February 4, 1957. This prompted petitioner's motion to vacate, etc.

In its answer to petitioner's motion to vacate, the Government admitted that it had knowledge from January 12, 1956 of the asserted right of immunity, but alleged that it had advised petitioner's counsel continuously from said date that it would not recognize said claim, that it desired to proceed with a joint trial of all defendants, and that

---

9. These facts fully appear in petitioner's motion for a severance (A. 7); the Government's answer thereto (A. 8); petitioner's reply (G. A. 6); the proceedings of January 23, 1956 when it successfully opposed petitioner's motion for a severance by insisting that a joint trial could be had, and misrepresenting that its case against these others was not dependent upon Marzec's testimony (G. A. 8-35, 31); its motion for a severance for Marzec (A. 15-16); the proceedings of January 23, 1957 (A. 18-27); petitioner's motion to vacate the order of January 23, 1957, setting his case for trial on February 4 and for a continuance (A. 28-78); its answer thereto A. 80-86); and the proceedings at the time of sentence on February 21, 1957. As appears from said proceedings, the Government had at least a tacit understanding, as far back as the fall of 1956, with counsel for Brandt and Sobieraj that their clients would plead guilty. The authority to dismiss the indictment against Kusper was dated January 31, 1957 (A. 288).

The Government nowhere denied that it had been continuously advised and knew that petitioner's counsel was making no preparation for trial and was unprepared for trial. It wanted to "catch" petitioner's counsel by "surprise" and unprepared. It did (A. 52, 55).

if Marzec was granted a severance, it would proceed against him first and then the others (A. 82). Having then such asserted knowledge and intentions, it had ample opportunity to and was then duty bound in fairness to all defendants and particularly petitioner to have then brought them forth, disclosed them, and effectuated them when petitioner filed his legally sufficient petition for a severance on January 16, 1956, and the matter came up in court on January 23, 1956.[10]

The facts relied upon by the court below to reject petitioner's contention that he was subjected to trial without prepared counsel do not establish that petitioner's counsel was prepared for trial, though from some of the language used one might glean that the court below so concluded. Probably the court below reached the same conclusions as those expressed by the trial court upon the urgings of the Government; namely, that "such preparations as were necessary to be made should have been made during the interval," December 15, 1955 to February 4, 1957 (A. 89), and that "if you are not prepared, it is your own fault" (A. 189), and that "you should have gotten this case ready for trial" (A. 254).[11]

---

10. Had the Government on January 23, 1956, joined in petitioner's motion for a severance, denied any deal with him, questioned his right to immunity, and urged that he be tried first—as it did just one year later—the entire complexion of this case would have been changed and petitioner and his counsel would have been compelled to proceed much differently than they did. The Government could not then in good conscience so act, even if it was required to misrepresent to the trial court that its case against the others was not dependent upon Marzec's testimony (G. A. 31) in that on January 23, 1956 it still required the cooperation and testimony of Marzec against his co-defendants. Yet, in its answer it would deny any "agreement" existed which would lead petitioner's counsel to believe that preparation for trial was unnecessary (A. 86)!

11. Apparently, the Government, the trial court and the court below were of the opinion that petitioner's counsel was duty-bound

Petitioner's motion to vacate and for a continuance awaiting executive clemency and alternatively for trial preparation was denied on February 4, 1957, because the case had been pending a long time and such preparation as was necessary should have been made during that period. Petitioner was immediately put to trial without benefit of prepared counsel (G. A. 121).

THE "CORRUPT RECORD."

The Government had ample quantitative evidence, oral and documentary and particularly certain summary sheets (D. Ex.'s 45 and 46) furnished it by Marzec—which it had accepted, recognized the accuracy thereof, approved and used to its benefit and as a basis for the indictment against all defendants, including Marzec—establishing not only that Marzec had distributed most of these cash commissions to these other three and the total amounts distributed to each, but likewise that he had retained his share thereof and the total amount he retained. From this evidence, as the court below was advised, the Government could have readily and easily established the charges of its indictment against Marzec.[12]

Having accepted, approved, and used this evidence as its own, the Government would seem to have been bound by it, even though much of it was beneficial to Marzec. However, at the trial it again shifted its position, disregarded Marzec's furnished evidence, disparaged and belittled all of it

---

to work with the attorneys for the other joined defendants in preparing for a joint trial, even while he was working with the United States Attorney against them and while the interests of his client were antagonistic to the interests of their clients—which he would not do (G. A. 86).

12. To do so, the government did not require the testimony of Sobieraj; Kusper or anyone (Worcester) on his behalf, or Brandt. Marzec was a required witness against these others and not these others against Marzec.

both as to its significance and extent (G. A. 392, 411-422, 503-511) and persuaded the court to exclude most all of it when it was offered by Marzec as a part of his case.[13]

Marzec and his accountant had prepared these summary sheets (supported by petitioner's net worth statements) from union records and a few fragmentary memorandums he still retained, showing at least that he had shared these cash commissions with the other defendants (D. Ex.'s 34 to 42, G. A. 503, 511). They showed specifically the amounts of commission Marzec had collected, and distributed, from what brokers, on what buildings (there was in excess of 150 of them), the total commissions distributed to each of the parties for the years in question, and the commissions he retained. The exclusion of these summary sheets left Marzec with no record evidence as to the total amount of the commissions he had distributed to the other three, and their exclusion was most erroneous and prejudicial.[14] This

---

13. Petitioner maintained before and at the trial that the Government, having accepted Marzec's furnished information, having investigated further, and having obtained this indictment, of necessity had in its possession material evidence beneficial to Marzec which it could not conceal, but was duty bound to produce (A. 46, 61, 90, 173, 273, 274). The concealment of and the failure to produce such evidence, the casting of aspersions on Marzec's furnished evidence, and the keeping of most of it from the jury was unconscionable (*United States* v. *Reynolds*, 345 U. S. 1, 12) and contrary to the basic concepts of fair play (*United States* v. *Morgan*, 304 U. S. 1, 22). The interests of the Government was not that it should win a case; but that the true facts be passed on by the jury so that justice could be done (*Berger* v. *United States*, 295 U. S. 78, 88).

14. The trial court refused to admit these summaries in evidence on the theory that they were manufactured evidence after the event (A. 225, 233). So is most every summary. They were consistent with and supported by the evidence received in the case, particularly the testimony of the brokers as to the amounts of the commissions they paid Marzec and on what buildings; the union records received in evidence (A. 94-96) and Marzec's testimony as to how he had distributed the received commissions between the others and himself. Marzec was not required to take each building and reaffirm the amount of commission he had re-

error was magnified when the Government repeatedly urged upon the jury that Marzec had failed to prove the specific amounts he had distributed to the other three defendants (G. A. 444-446, Motion for New Trial, A. 290-292).

Having used Marzec, his summaries, etc., as aforesaid; having procured this indictment charging all parties with being in a joint venture; and having by subsequent pleadings and in open court affirmed and reaffirmed that Marzec was a mere collector of these cash commissions, a mere conduit for most of them to the other three; and that the unreported income of each was only "his respective share of the proceeds of the joint venture" (A. 9)—all of which acts would seem binding upon the Government—it again drastically shifted its position and did an about face at Marzec's trial.

It undertook not only to charge Marzec with his "respective share" of the proceeds of the joint venture, but also a part of Sobieraj's "respective share" by means of the knowingly false testimony of Sobieraj to the effect that all the commissions he received from Marzec, checks and cash, were turned into the partnership with his mother-in-law and their receipt reflected in a little black book (G. Ex. 33), the partnership record (Tr. 212, 213, 241, 245).

It then undertook to charge Marzec with Kusper's share of these cash commissions by the knowingly false testimony of Special Agent Worcester, who had been the chief aide of the United States Attorney in the preparation of this case, even prior to the return of the indictment (A. 228). Worcester testified that he could find no evidence and the Government had no evidence that Kusper had received a part of these cash commissions (G. A. 302-5). For

---

ceived, its distribution separately and in total. This was all a matter of summary. He and his accountant could have prepared identical summaries at the time of his trial from the evidence in the record.

detailed facts and an analysis of the testimony of Sobieraj and Worcester, see Appendix C, *infra,* pp. 57-61.

Contrary to the charges of the indictment, the Government's subsequent pleadings, and recognized tax law, Worcester testified that he charged all these commissions as taxable income to Marzec and then conducted an investigation; dehors the record, to determine and verify what "deductions" Marzec was entitled to by way of distribution of these others (G. A. 301). He gave Marzec credit against the whole for only such cash commissions as these others admitted to Worcester they had received, though all three had previously denied the receipt of any cash commissions in the affidavits they gave to the investigating agents and again before the Grand Jury. Since Brandt had admitted to Worcester the receipt of substantially all the commissions Marzec asserted he had paid him, Marzec got credit for these (G. A. 302).

Worcester gave Marzec credit for all the commissions he had distributed to Sobieraj by checks either payable to him or the partnership. Approximately $2500 of said checks never reached the partnership and their receipt was not reflected in (G. Ex. 33), "our" partnership book (G. A. 346, 352, 394, 395; G. Ex. 33A-B). As to the cash commissions Marzec had distributed to Sobieraj, Worcester, consistent with Sobieraj's false testimony gave Marzec credit for only such cash, the receipt of which was reflected in said book (G. A. 301, 302). Worcester's own computations (G. Ex. 33A & B) disclosed his knowledge that Sobieraj was not turning into the partnership all the commissions, checks and cash, that he was receiving from Marzec.

As to Kusper, though the receipt of these cash commissions was the entire basis of the indictment against him, Worcester, consistent with his own false testimony, gave Marzec credit against the whole for *none* of said cash

commissions he had distributed to Kusper, but only for the B. Repsuk and Kusper checks since Kusper had again denied to Worcester the receipt of any of such cash commissions and their receipt was not reflected in Kusper's books which Worcester testified he had examined (G. A. 303). The thought did not occur to the Government, the United States Attorney, or him that the receipt of these cash commissions by Kusper would not be reflected in his books, and if they were, Kusper would not have permitted their examination.

Worcester's testimony and his computations were a fraud on the court and on Marzec (Motion to withdraw a juror, A. 276). His attempt, in the first instance, to load on Marzec all these commissions as unreported income was, of itself, prejudicial error, *Singer* v. *United States* (C. A. 3) 58 F. 2d 74, 75. His testimony as to the *results of his investigation outside the evidence in this case* was also prejudicial error, *Wilkes* v. *United States* (C. A. 9), 80 F. 2d 285; *Olender* v. *United States* (C. A. 9), 210 F. 2d 795; *United States* v. *Ward* (C. A. 3), 169 F. 2d 460. And when he undertook to evaluate the testimony at the trial and the evidence Marzec had furnished the Government accepting part and rejecting part, for various professed reasons (A. 308-9), he "usurped the function of the jury", *Steele* v. *United States* (C. A. 5), 222 F. 2d 628, 630. His testimony and computations were false, incomplete, inaccurate, misleading and a monstrosity of errors. *United States* v. *Altruda* (C. A. 2), 225 F. 2d 935, 942; *United States* v. *O'Connor* (C. A. 2), 237 F. 2d 466, 475.

Worcester's computations of Marzec's supposed unreported income were based on this testimony of Sobieraj and himself. The determination of the tax expert, Ruggaber, as to the "true tax due" from Marzec was in turn based on the computations of Worcester (A. 182-190). Objections as to the admissibility of or to strike all of this

evidence was made and overruled at one time or another (G. A. 244, 313, A. 182, 183, 236, 237).[15]

The indictment, the Government's subsequent pleadings and its own acts and admissions cast "the darkest shadow upon the truthfulness of" the testimony of Sobieraj and Worcester. Confronted with these facts on the one side and their testimony "suspect of taint" on the other side, the trial court in proper solicitude of the rights of petitioner was duty bound to have ascertained where the truth lay between these conflicting situations, both brought about by the Government. The trial court should have, on its own motion, required a full accounting from the Government for its conflicting actions and should have required it to produce all evidence pertinent to this matter, and resolved same, before it permitted the Government to proceed further. The *Shotwell* case. (Mo. to withdraw a juror etc., A. 266-277.)[16]

Instead, during the cross examination of Worcester the trial court refused to permit petitioner to develop the fact that Kusper's books would not show the receipt of these cash commissions (G. A. 305); that all three of these defendants had originally denied receipt of them (G. A. 308); that the grand jury had found that Kusper had received part of this cash (G. A. 307) and what evidence the government had in their files to show his receipt

15. On this record, it should not be too difficult to comprehend why petitioner's counsel, in the court below, urged that "the government has gotten itself into the ridiculous position of not having established by competent evidence unreported income and a tax due for the years in question".

16. The basic utterances of this Court in its opinion in the recent case of *Jencks* v. *United States*, 356 U. S. 657, and the interpretation of said opinion by the court below (*United States* v. *Killian*, C. A. 7, 246 F. 2d 77, rehearing granted 8-19-57, 82) would also seem most applicable to this situation.

thereof (G. A. 305).[17] It then refused to permit Marzec to fully develop these latter facts (A. 190-196, 226-227).

The trial court kept the B. Repsuk checks out of evidence because they were not relevant to any issue in the case and would only confuse the jury (A. 222). Ninety per cent of the check distributions Marzec made to Kusper were made by such checks (G. A. 252, 258, 303). Kusper's sharing in these commissions under such circumstances should be some evidence that he was also sharing in these cash commissions. These checks not only corroborated Marzec's information and testimony and the charges of the indictment against Kusper that he had also shared in these cash commissions but likewise reflected on the truthfulness of Worcester's testimony to the contrary. As appears in Appendix C the Government had much additional evidence establishing that Kusper had so shared, some of which was admitted in evidence and some of which was denied admission.

The Government, by and through the testimony of Worcester as to Kusper, was on its way to again stifle the prosecution of Kusper and to frustrate the very action of the Grand Jury it induced. (Mo. to declare mistrial A. 272-273). The sequence of events: on January 23, 1957, it first turned on Marzec; on January 31, 1957, authority was obtained to dismiss Kusper; on February 7, 1957, Worcester testified at the trial of Marzec that the Government had no evidence against Kusper; and on February 18, 1957, it dismissed the indictment against Kusper for insufficient evidence![18]

---

17. It was this same type of limitation on cross examination by the same trial judge which caused the Solicitor General to confess error and this Court to reverse the decision of the court below in the *Kretske* case, *United States* v. *Kretske*, 350 U. S. 807; reversing 220 F. 2d 785. See also *Alford* v. *United States*, 282 U. S. 687.

18. Worcester's testimony as to Kusper could well have been a pretense of basis for such dismissal. If so, then such testimony

The testimony of Sobieraj, Worcester, and the latter's computations based thereon were projected into the instructions of the trial court to the jury by way of additional instructions prepared by the Government. The statement of petitioner's counsel that the instructions prepared by the trial court and given were fair and unobjectionable (A. 245) did not apply to those additional instructions (A. 245-251), as the court below concluded. The trial court committed reversible error in submitting this case to the jury without adequate instructions on behalf of Marzec and in giving such additional instructions.[19]

---

was "but a further step to 'fix' " Kusper's "tax difficulties possibly involving the corruption of Government officials and certainly entailing an attempt to perpetrate a fraud upon the court", paraphrasing the words of this Court in the *Shotwell* case.

By the same token, Sobieraj's unrequired testimony given against Marzec could well have been but a pretense of basis for the representations as to how helpful he had been to the Government made by his counsel and the Government to the trial court at the time of sentence to urge his probation. By the same token, the keeping of Brandt around the courtroom during the trial of Marzec to give unrequired testimony against him could well have been designed to obtain from the trial court favorable treatment for Brandt upon similar representations. It seems clear beyond argument that all three of Marzec's superiors benefited as a result of his prosecution.

19. The charges of the indictment and the government's position as asserted in subsequent pleadings were consistent with recognized tax law. The position and action of Worcester as reflected by his testimony and computations *were not*. Under the Internal Revenue Code of 1939 (Sec. 3797(a)), a joint venture, for tax purposes, is treated as a partnership, and proof of the receipt of income by one member of a joint venture does not make it the income of such member, but rather of the partnership or joint venture, *Bartholomew* v. *Com'r*, 186 F. 2d 315 (C. A. 8), 1951; *Brady* v. *Com'r*, 25 T. C. 682 (1955); *Estate of Koen* v. *Com'r*, 14 T. C. 1406, 1409 (1950); and *Abbott* v. *Com'r*, 30 B. T. A. 227, 229 (1934).

It was reversible error for the trial court to have denied petitioner's counsel time to prepare instructions on his behalf and to have then submitted this case to the jury without adequate instructions on Marzec's behalf and on his theory of the case. *Tatum* v. *United States*, (C. A. D. C.), 190 F. 2d 612, 617, cited with approval in *United States* v. *Phillips* (C. A. 7), 217 F. 2d 435.

The trial court most erroneously instructed the jury that the

THE SENTENCES.

Petitioner's motion for judgment of acquittal and in the alternative, for a new trial (A. 280-286) was denied on February 21, 1957. Brandt, Sobieraj, and Marzec then came up for sentence.

Counsel for the first two emphasized how much time and expense the government had been saved by and through their pleas of guilty and how helpful they had both been to the government; Sobieraj, by his given information and testimony; Brandt, by agreeing to testify for the government against Marzec and waiting around the court room to be called if necessary. They both urged pre-sentence investigation and probation for their clients. The United States Attorney confirmed their representations; affirmed that they had been helpful; emphasized the difficulty of proving a case against them and, in effect, advised the trial court that he had no objection to probation for them. He stated he had no objection to pre-sentence investigation.

Sobieraj, who had given the investigating agents a false affidavit that he had not shared in these cash commissions; who had falsely testified to like effect before the Grand

---

testimony of Worcester (and Ruggaber) and the exhibits prepared by them "*were offered* and are to be construed by you only as an explanation by the witnesses *as to what the evidence and the exhibits in this case show*". (A. 264). That was not the purpose of Worcester's testimony. Part of his testimony was *dehors* the evidence in this case and he undertook to evaluate the evidence in this case. Implying that all these commissions collected by Marzec represented taxable income to him, the trial court instructed that the government was not required to prove "*that the defendant did not have unreported expenses or deductions which might offset such unreported receipts*". It thus most erroneously instructed the jury contrary to the charges of the indictment, the government's avowed theory of the case and the correct principles of law applicable to it—and shifted the government's burden of proof onto Marzec, *United States* v. *Indian Trailer Corp.* (C. A. 7), 226 F. 2d 595, (A. 263.)

Jury; who had stood in defiance of his government continuously until February 18, 1957, when he pled guilty, and who then, thereafter falsely testified at the trial of Marzec and again attempted to lie out of the receipt of all of the commissions he received, was placed on probation for one year, receiving no punishment.

Brandt, who had furnished the investigating agent with a false affidavit that he had not shared in the cash commissions and who had testified to like effect before the Grand Jury and who had stood in defiance of the government until shortly before his plea of guilty on January 28, 1957, and who finally admitted that Marzec had distributed cash commissions to him in substantially the same amounts claimed by Marzec, was sentenced to one year but denied probation.

Kusper, who had furnished a similar affidavit, similar Grand Jury testimony, and advised Worcester of similar effect and who still stood in defiance of the government, had previously been "rewarded" by having the indictment against him dismissed on February 18, 1957.

The situation was much different when it came to petitioner. The trial court, first, cast aspersions on his counsel saying: "I won't try to characterize the sort of representation the defendant, Marzec, has had during the prosecution of this law suit." Later, directing his remarks against Marzec stated: "It has been the Court's observance that he stood in defiance of his government and that he has attempted to hoodwink a jury, as well as having committed the crime of which he stands convicted by the jury.[20]

---

20. Considering all these remarks of the trial court in relation to all the facts, they should furnish strong evidence that petitioner had been subjected to trial by a biased and prejudiced judge with a bent of mind which may have prevented and impeded impartiality of judgment (*Berger* v. *U. S.*, 255 U. S. 22, 33). This lack of impartiality was reflected in many of his rulings during the trial and was certainly projected into the sentences he imposed.

Marzec, the "mere" employe and collector, who, as far back as 1954, fully cooperated with his Government; who was responsible for bringing the real culprits to the Bar of Justice; whose counsel informed the court and jury of the true facts; who availed himself of his constitutional right to a trial by jury and testified truthfully on his own behalf, was given a sentence of three years in the penitentiary and denied probation.

Ours being a government of laws and not of men, such an over-all use of our administrative and judicial processes with such end results should constitute a denial of due process and most certainly is obnoxious to the four little words upon the home of this Court.

REASONS FOR GRANTING THE WRIT.

This case presents several important questions of criminal law which have not been, but should be, settled by this Court.

I.

This Court held in *The Whiskey Cases,* 99 U. S. 594, that an accomplice who comes forward and freely admits his culpability, and at the instance of the prosecution furnishes information and testimony against his confederates in crime, acquires an equitable right to immunity. And that it was the duty of the trial judge to protect that right by continuing the trial date pending executive clemency or dismissal. The court below was of the opinion that the doctrine had been abolished by the enactment of the Federal Probation Act. But other circuit courts have thought otherwise. See *Russell* v. *United States,* 12 F. 2d 683 (C. A. 6); *United States* v. *Levy,* 153 F. 2d 995 (C. A. 3), and *Healey* v. *United States,* 186 F. 2d 164 (C. A. 9). These cases were decided after the enactment of the Federal Probation Act and there appears to be a direct conflict between the decisions of the various Circuits as to whether the rule enunciated in the so-called *Whiskey Cases* is in effect today.

The Federal Probation Act unquestionably gives a trial court authority to suspend the imposition or execution of sentence and to place a defendant on probation upon such terms at it deems best. However, it does not take away from a defendant his right to equitable relief. If the Probation Act was intended as a substitute for the equitable rights of an accomplice as defined by this Court, then under the facts presented here, petitioner was entitled to probation and the failure of the trial court to grant him probation

was clearly an abuse of discretion. If the court below is right, an accomplice who supplies the Government with evidence acquires nothing but the right to plead guilty—a right accorded any defendant.

The court below said there was no evidence of any promise of immunity to petitioner. In saying this, it overlooked the fact that his information and testimony was used in obtaining the indictment against all the defendants and that the Government later admitted that without his help "it is doubtful if indictments against the other three could have been returned."

It seems clear from the *Whiskey Cases* that the immunity involved here does not necessarily depend upon an absolute promise of immunity by the prosecutor. The immunity springs from the acceptance by the prosecutor of the aid and assistance of the accomplice. It is clearly equitable in nature, and "arises out of the fundamental demand for justice and fairness which lies at the basis of our jurisprudence." *Lovely* v. *United States*, 169 F. 2d 386 (C. A. 4).

It has been recognized for years that in many cases the interests of justice require the testimony of accomplices as against their confederates in crime, and that the Government should not accept such benefits without some corresponding obligations. A due and proper administration of our criminal laws requires that the right of such an accomplice be defined, since much doubt has been cast upon his rights by the decision below.

II.

Petitioner was denied the assistance of counsel at his trial under most unconscionable circumstances. Relying on the fact that petitioner was a required Government witness against these others, and his right to immunity, petitioner's counsel had filed no preliminary motions on his behalf,

other than his motion for a severance, and had made no preparation and was unprepared for his individual trial. He continuously so advised the Government as the agreed joint trial date approached, seeking, with little success, clarification of how the Government intended to proceed at the trial with Marzec as a required Government witness.

On January 23, 1957, in an admitted drastic change of position, the Government no longer requiring the petitioner, his cooperation or testimony, denied any deal with him and sought to try him first, well knowing that his counsel was unprepared. The trial court so ordered. This prompted petitioner's motion to vacate said order and for a continuance, wherein the above facts were alleged. The Government in its answer to said motion did not deny them. Petitioner's motion was overruled on February 4th and he was forced to trial immediately, without benefit of prepared counsel.[21]

As affirmed and reaffirmed by this Court, under the Sixth Amendment to our Constitution a defendant in a criminal trial in our Federal courts is entitled to the Assistance of Counsel, effective counsel, and prepared counsel; that this right is of a most fundamental character and cannot be abridged, interfered with, or impinged upon in any manner; that it is so absolute that when a denial of it is made to appear, courts are not permitted to indulge in nice calculations as to the amount of prejudice arising from such denial; and that a trial judge has a positive and solemn duty to conduct a trial with the greatest solicitude for those rights and to insure their fullest protection at every stage

21. The record indicates that petitioner's counsel had never before in any case, and he had tried many, filed a petition seeking a continuance because he was unprepared; that in all said cases he tried, whether for a plaintiff or a defendant, he never entered the trial unless and until he was most fully prepared for trial and that his experiences here were most harrowing. (Motion to withdraw a juror and declare a mistrial and alternatively for a continuance of ten days, A. 267-277).

of the proceedings. *Powell* v. *Alabama,* 287 U. S. 45, 59; *Johnson* v. *Zerbst,* 304 U. S. 458, 463; *United States* v. *Glasser,* 315 U. S. 60, 71; *Hawk* v. *Olson,* 326 U. S. 271, 278. See also, *United States* v. *Koplin,* 227 F. 2d 80 (C. A. 7).

The facts as set forth above and undenied were far more controlling in determining the applicability of the above utterances of this Court than was the fact that clockwise this case had been pending for some fourteen months. Assuming, but denying that petitioner's counsel was at fault in some way, petitioner should not have been penalized particularly under the facts and circumstances of this case.

III.

Having been forced to trial with unprepared counsel, petitioner was then subjected to a "trial" without precedent. Everything detrimental to him was admitted in evidence, and most everything beneficial to him was kept out of evidence. For fear he would not be convicted, he was then confronted with a "corrupt record". The government of a strong and free nation does not need such convictions. *Mesarosh* v. *United States,* 352 U. S. 1, 14.

As shown above, there was a continuous and flagrant denial of due process throughout all these proceedings. It began with the investigation by the agents, and ended with the sentences imposed. Due process is not a yardstick. Its "standards of justice are not authoritatively formulated anywhere as though they were prescriptions in a pharmacopoeia." Due process "inescapably imposes upon this Court an exercise of judgment upon the whole course of the proceedings in order to ascertain whether they offend those canons of decency and fairness which express the notions of justice of English-speaking people even toward those charged with the most heinous offenses." (Concurring opinion, Mr. Justice Frankfurter, *Adamson* v. *Cali-*

fornia, 332 U. S. 19. To the same effect see *United States ex rel. Montgomery* v. *Ragen,* 86 F. Supp. 382 (N. D. Ill.).)

The whole proceedings both administrative and judicial which were directed against the petitioner were most unusual. The Internal Revenue Service, in referring this case to the Department of Justice for prosecution, allocated all of such commissions to the petitioner, ignoring the fact that at least three-fourths of the commissions had been received by others. It recommended only the prosecution of petitioner. Upon learning this, petitioner advised the United States Attorney that there were others of far greater guilt involved and offered to disclose and furnish facts showing to whom the "commissions" had been paid. The Government later admitted its indebtedness to petitioner for the testimony he had given, which enabled it to proceed against the others. Yet, the petitioner was sentenced to three years imprisonment. As to the others of at least equal guilt; one was absolved; another received no punishment, probation; and the third a minimum, one year. "When, however, they (criminals) are convicted through a denial of a substantial right extended to them by their government, they can but despair; and when the courts permit a construction of the law which makes the government break faith with individuals, whether offenders or not, then the reason for the courts has ceased and justice is no more." *United States* v. *Pardue,* 294 Fed. 543, 548 (S. D. Tex. 1923).

Whether or not petitioner was guilty of tax evasion, he was entitled to due process which, of course, includes a fair trial and fair treatment. He was denied both.

CONCLUSION.

The decision below is erroneous and out of harmony with rulings in other circuits and this Court. It presents questions of substantial importance in the enforcement of the penal provisions of the Internal Revenue Code. The petition for a writ of certiorari should be granted.

Respectfully submitted,

ELLIS N. SLACK,
Shoreham Building,
Washington, D. C.,
JOSEPH A. STRUETT,
105 West Madison Street,
Chicago 3, Illinois,
Attorneys for Petitioner.

APPENDIX A.

IN THE UNITED STATES COURT OF APPEALS.
For the Seventh Circuit.

No. 11979. September Term 1957—September Session 1957.

UNITED STATES OF AMERICA,
Plaintiff-Appellee,
v.
JOSEPH T. MARZEC,
Defendant-Appellant.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

December 13, 1957.

Before DUFFY, *Chief Judge,* SCHNACKENBERG and PARKINSON, *Circuit Judges.*

PARKINSON, *Circuit Judge.* This is an appeal from a judgment entered on a jury verdict finding the defendant Joseph T. Marzec guilty of income tax evasion.

In his summation to the jury, counsel for the defendant, Mr. Joseph A. Struett, said:

> "There isn't any question in this case and never has been that Mr. Marzec is guilty in the sense that he failed to report his income in the years in question in the amounts he should have at the time he should have.
>
> I couldn't argue conscientiously to you people otherwise. He has told the Government that and he has admitted it to me and I am not going to deceive you.",

and in his brief he informs this court that:

> "Marzec certainly is not without culpability herein and in a sense is guilty in that he did not report his

> true taxable income for these years nor pay taxes thereon."

However, defendant contends that he was subjected to abuse and misuse of the administrative and judicial processes in the bringing about of his conviction and sentence.

On December 15, 1955, an indictment in eight counts was returned against Frank A. Brandt, Stanley T. Kusper, Bruno J. Sobieraj and the defendant charging them with a violation of Title 26 U.S.C.A. § 145(b) in failing to report their respective shares of the proceeds of a joint venture for the years 1949 and 1950. Counts 1 and 2 so charged Brandt, Counts 3 and 4 Kusper, Counts 5 and 6 Sobieraj and Counts 7 and 8 Marzec.

The defendant contends that he had an equitable right to immunity and it was reversible error for the trial judge to have refused to recognize and protect that right by not continuing his trial date pending executive clemency or dismissal.

There are many reasons why this contention is entirely without merit. First and foremost is the fact that even if there did exist the doctrine of common law approvement in our federal court system as the result of the Supreme Court's decision in the *Whiskey* Cases, 1879, 99 U.S. 594, the enactment of the Federal Probation Act has, for all practical purposes, abolished the doctrine. *King* v. *U.S.*, 8 Cir., 1953, 203 F. 2d 525. Secondly, there was no evidence of any promise of immunity to Marzec. To the contrary the testimony of Robert Klenha, a Special Agent in the Intelligence Division of the Internal Revenue Service, was as follows:

> "This is the instrument that I was particularly concerned about. The form it was in and the implications of the tender caused me to tell Mr. Struett and Mr. Marzec that I could not accept any of these things on behalf of the Revenue Service with any conditions or any strings attached to it; that I

couldn't accept this as absolving Mr. Marzec of any responsibility or liability that he was open to.

I also offered to accept these for what they were worth, but again with that condition that we would not be bound in any manner by way of a grant of immunity or extending a hope of reward to Mr. Marzec.

I believe I did not put it in quite that language, I repeated myself a number of times that I could not accept these with any strings attached; and Mr. Struett kept tendering these to me, and I kept handing them back to him. I believe that it was a cause for some particular comment later on, the way we handed these instruments back and forth between Mr. Struett and myself."

Thirdly, the indictment was returned on December 15, 1955. The cause was assigned for trial on January 9, 1957, over a year after the return of the indictment, and on December 5, 1956 the cause was continued to and reassigned for trial on February 4, 1957 by agreement of counsel for the parties. If Marzec was sincere in his claim to an equitable right of immunity he had many months prior to trial to move in that direction and yet he did absolutely nothing. It is, therefore, crystal clear that under no circumstances can Marzec contend that he had an equitable right to immunity.

This court has repeatedly held that the trial court's action on an application for a continuance is purely a matter of discretion and not subject to review unless it is clearly shown that the discretion has been abused. *U. S.* v. *Yager,* 7 Cir., 1955, 220 F. 2d 795. This record shows no abuse of discretion whatsoever in fact the showing is entirely to the contrary. This is dispositive of the second contention of the defendant that "the trial judge committed reversible error when he denied Marzec's motion to continue his trial to permit the filing of preliminary motions, a determination thereof, and, if necessary, preparation for trial, but rather forced Marzec to trial with

full knowledge that his counsel was unprepared and denied Marzec his constitutional rights." It is difficult for us to understand how such a theory can be advanced in face of the record in this case showing that it was pending for more than a year between the return of the indictment and the trial and also showing the assignment for trial by agreement of counsel for the parties two months prior to the trial date.

The defendant urges upon us the proposition that a defendant is entitled to a fair trial irrespective of his guilt or innocence. It is undebatable that every party litigant is entitled to a fair trial. However, the defendant contends that the trial judge failed to maintain a fair and impartial attitude during the trial; that he improperly limited defense counsel's cross-examination of government witnesses; that he improperly admitted and refused to strike Worcester's testimony and computations which were false and legally indefensible; that he erroneously excluded Marzec's evidence refuting wilful intent though the United States Attorney had opened the subject on cross-examination and "erred in failing to give instructions on behalf of Marzec but most erroneously instructed the jury."

The defendant sets out in his brief some excerpts of the record in an attempt to substantiate these contentions. One such, as an illustration, appears on page 45 of his brief. It is as follows:

> "By the Court: Any further cross-examination of this witness?
>
> By Mr. Struett: What?
>
> By the Court: Any further cross-examination?"

Immediately following the brief says:

> "This counsel had hardly begun his cross-examination."

When read in context the record shows that counsel for

the defendant then proceeded with his cross-examination and continued until the afternoon adjournment and then continued the following morning with extensive cross-examination. This is characteristic of the other excerpts quoted and when they are likewise read in context there is no indication whatsoever that this defendant was denied any of his rights to a fair trial. He was permitted to fully cross-examine the government witnesses and, in our opinion, the trial court committed no reversible error in its ruling on the evidence.

At the conclusion of all the evidence and after the trial court had heard argument on certain motions of the defendant and ruled thereon, a conference was held between the Court and counsel on the matter of instructions. The defendant had tendered no instructions and counsel for the defendant informed the Court that:

> "I have been over your instructions, they are fair. There isn't any question about it. I have no objection to them, they are all proper, so forth and so on."

If the defendant desired to tender any instructions it was his duty to do so at the close of the evidence. Rule 30 of the Federal Rules of Criminal Procedure, 18 U.S.C.A. He completely failed to do so and informed the court that he had been over the court's instructions; that they were fair, and had no objection to them. There is no merit to the contention of the defendant that the court erred in failing to give instructions on his behalf or that it erroneously instructed the jury.

The defendant asserts that the United States Attorney introduced false testimony against him; that the United States Attorney's conduct was unconscionable and the government should have been required to produce evidence that was in its files favorable to the defendant. The record does not support these assertions but demonstrates just the contrary.

The defendant finally contends that he was entitled to a judgment of acquittal because the government failed to prove a tax due, and that "these proceedings against Marzec constitute a flagrant denial of due process and are so repulsive to a due and proper administration of our Revenue Laws and criminal justice as administered by our Federal Courts, that no conviction of Marzec should be permitted to stand."

The defendant's evidence alone prove . that he was guilty. His counsel informed the jury in his closing argument that he was guilty and the defendant has filed a brief in this court so informing us. Upon what theory he can contend that he was entitled to a judgment of acquittal because the government failed to prove a tax due is beyond our comprehension.

The defendant's charge that he was subjected "to a hurry-up rush trial with his counsel unprepared and not well" is entirely without foundation. As we have already pointed out this cause was pending some fourteen months between the return of the indictment and the trial and on December 5, 1956, by agreement, it was continued from January 9, 1957 and reassigned for trial on February 4, 1957. The trial commenced on Monday, February 4, 1957 and ran through Thursday, February 7, 1957 when, at the request of counsel for the defendant and after the government rested, it was adjourned to Monday, February 11, 1957 and went to the jury on Wednesday, February 13, 1957.

We have read the entire record in this case and in view of the course pursued by counsel for the defendant we are convinced that the trial judge was not unfair under the circumstances. We are likewise convinced that the defendant was afforded a fair trial and was denied none of the rights guaranteed to him as a party litigant.

The judgment is AFFIRMED.

APPENDIX B.

THE CONSPIRACY.

Introduction.

It was and is the position of petitioner that during the course of the investigation of this case by the Chicago office of the bureau, there may well have been in full force and effect a criminal conspiracy to frame Marzec, to obstruct justice, and to shift onto Marzec all civil and criminal tax liability for all these unreported cash commissions, and to simultaneously relieve these others, Brandt, Kusper, and Sobieraj, of any such liability; that these other defendants, certain investigating agents, Marzec's selected counsel and accountant, and one of the group of brokers (Miller) may well have been members of that conspiracy. It was a part and parcel of said conspiracy that certain of said conspirators, recognizing that, if the true facts were brought out, Marzec would have been recognized and considered only as a required government witness, undertook to and did induce Marzec to keep quiet and deny the receipt of all these commissions on the false representations that, since cash was involved, it would be hard to prove and that if he so acted, they would be able to and would settle all tax liability for said commissions without injury to Marzec, actually intending to put Marzec in the worst possible light with the Bureau, conceal from him the true status of his case, cause his indictment and conviction, stifle the prosecution of these others, and load all civil income tax liability for all of these commissions onto Marzec alone. Of comparable effect, see Indictment United States District Court Chicago, 57 CR 149, *United States* v. *Harold Sullivan, et al.; United States* v. *Shotwell Manufacturing Company, et al.*, ... U. S. ....., decided December 16, 1957.

There were big stakes involved in this conspiracy. Had petitioner alone been indicted and convicted, as these investigating agents intended and recommended, the prosecution of Brandt, Kusper, and Sobieraj would have been stifled, but that was but a part. There was a most substantial civil income tax liability involved, which, under Bureau procedures, had to be disposed of after the disposition of the criminal aspects of this case. Had Marzec alone been convicted, he would have had little chance, if any, to defeat the substantial civil liability for all these commissions which these same investigating agents had set up against him alone. These other defendants would have been free to again falsely deny the receipt of most of them and no one would believe Marzec, a convicted felon, that he was but the collector and had passed most of them on to Brandt, Kusper, and Sobieraj.

It is significant that, as publicly announced, in March of 1957 there was impanelled in Chicago a Federal Grand Jury to investigate malfeasance, misfeasance, official corruption, and favoritism within the Chicago office of the Bureau during the very period that this case was under investigation.[1]

THE FACTS.

We here give the Court the facts and of necessity they must be detailed. It is for this Court to determine their significance. In determining the existence of or nonexistence of this conspiracy its participants and its objectives, the protestations of one or more of the persons who may be involved are far less important than are matters of conduct, acts, explanations, relationships, time elements and the results desired and accomplished. Should

1. Press releases of Howard B. Gliedman, Special Assistant Attorney General, Chicago Daily News and Chicago American, March 7, 1957, and Chicago Tribune and Chicago Sun Times as of March 8, 1957.

such a conspiracy, in fact, exist, then the acts and declarations of each are binding on the others. All as recognized by the law of conspiracy. It should be noted as these facts are developed that Marzec in his testimony refers to many conversations with Miller, Sobieraj, Brandt, Wilson and Richardson. His version of these conversations and their purport and effect in the main stand uncontradicted in the record, though Miller, Wilson and Sobieraj all testified as government witnesses; Brandt admittedly was available as a government witness and Richardson was under subpoena as a government witness. It should also be noted that most of the incriminating facts herein come, not from Marzec, but from the testimony of the government's own witnesses. Their varied versions or explanations of the same situations often are most pertinent to the issues here presented. These facts are also to be considered in relation to the duty of investigating agent to check leads and ascertain the true facts. *Holland* v. *United States,* 348 U. S. 121, 135-136.[2]

The investigating agents of the Bureau had full knowledge from practically the inception of this investigation: (1) that Marzec a clerical employee was but the collector [broker Miller as a government witness testified he so advised them (Tr. 183-4)]; (2) that Marzec was collecting large sums by way of commissions, approximately $60,000 in 1949 and $90,000 in 1950 from all the brokers involved and the circumstances under which he was collecting same (mostly in cash) (Tr. 400-402); (3) that he was distributing at least part of these commissions to at least Sobieraj and Kusper, the latter under most suspicious circumstances (the Rupsek checks); (4) that Kusper was

2. The testimony of all witnesses here discussed is set forth in full in the Government Appendix with page references to the original Court Reporter's transcript. Since we shall here deal with specific facts we shall use these transcript references. (Tr. .....)

involved in the receipt of these cash commissions in that before broker Milton could obtain a loan from the Union, he was required to deposit in escrow with Kusper a cashier's check of his attorney for $2,600 duly endorsed (A. 100-102, 105-107); (5) that in at least one instance Brandt had refused to accept a check of $1000, insisting on the cash (Miller, Tr. 176-8) and the thought had occurred to one of them, a special agent of twenty years' experience, that "an employee in an inferior position must have had to share in any money he collected" (Wolfe, Tr. 442-3).

Despite this knowledge and these thoughts, these agents for all practical purposes made no real investigation of this case. They called Marzec in and in the presence of "his" accountant Wilson asked him a few questions, permitted him to deny the receipt of any commissions from one broker and permitted him, when asked if he had shared these commissions with officers of the Union, to state that he had reported all of his income and, according to them, later permitted Marzec to say he "didn't care to talk." (Tr. 432.) Then they charged the entire tax liability, civil and criminal, for all these unreported cash commissions onto Marzec alone and recommended his prosecution only. They simultaneously sought to, and did, relieve Brandt, Kusper, and Sobieraj of all tax liability, civil and criminal, and to stifle their prosecution. Only through the vigorous action of the United State Attorney (there was the same United States Attorney involved throughout all these proceedings), with the solicited aid, information and testimony of Marzec, were these others brought to the Bar of Justice and indicted, all despite vigorous opposition of representatives of the Bureau, Internal Revenue Service. Such opposition was a confirmation of their determination to stifle the prosecution of these others and to relieve them of all civil tax liability.

Early in the investigation, broker Miller advised Marzec

that he had discussed the matter with Kusper, Brandt, and Sobieraj and they had told him, Miller, that he should advise Marzec to hire a lawyer, and Marzec told him that he would check the matter with these others. (Tr. 641.) Marzec then testified that he went to Brandt, told Brandt of his conversation with Miller and Brandt said he agreed that Marzec should get a lawyer because "this cash is not disclosed and we will settle this matter later on after the investigation is completed." (Tr. 643.) Marzec then went to Sobieraj and told him of his conversation with Brandt and Sobieraj told him to just keep quiet and "when this is all investigated—we will settle the bill." (Tr. 643.) Marzec then went back to Miller, who recommended lawyer Richardson. (Tr. 643-644.) Miller then phoned Richardson and he came over to Miller's office and they discussed the whole case, and subsequently had other meetings in which they discussed the loans that were made and the way the commissions were paid. The trial court was of the opinion that these facts did not "mean that they hired a lawyer for him." (Tr. 666.) This was a factual question for the jury. The trial court did not care whether Richardson at the time of his "employment" asked for or received any money from Marzec (Tr. 667)[3], and refused to let Marzec show these circumstances. (Tr. 657.)

Richardson later recommended to Marzec that he also employ an accountant by the name of Wilson. Wilson came to Marzec's house where Marzec met him for the first time and employed him either in the latter part of 1950 or the first part of 1951 and explained to him the true facts. (Marzec, Tr. 643 to 649, G. A. 359 to 362.) Wilson

---

3. The trial court struck Marzec's first conversation with Miller as being immaterial (Tr. 641-642), and even after Marzec had confirmed this conversation with Brandt and Sobieraj, the trial court refused to change his rulings. (Tr. 719-721.) The trial judge considered broker Miller's role herein similar to that of a policeman on the corner! (Tr. 720.)

testified that he was employed by Marzec during the year 1951, that he was first hired by him in the latter part of 1950 and he was referred to Marzec by Richardson who had called him and he went out to Marzec's home. (Tr. 250 to 252.)

This investigation was commenced according to Revenue Agent Osheroff on September 27, 1950, when he went to Marzec's home and asked him for his records for the year 1949, and for a copy of his returns for that year, and compared the records with the return. Osheroff testified that the next day he received a telephone call from accountant Wilson in which the latter said that he had been employed to represent Marzec in the income tax matter which had come up although Osheroff had mentioned nothing about a possible tax deficiency to Marzec the previous day. Osheroff was certain that he had this conversation with Wilson the day after he had visited Marzec's home, and that he had made a memorandum thereof at the time. (Tr. 409-410.) Thus, Wilson was employed in this case to represent Marzec by someone long before Marzec knew about it and long before Marzec knew Richardson or Wilson or "employed" either of them. (Tr. 647-8.)

Marzec testified that in the Fall of 1950, in October, November and December, he had a conversation with Miller in which Miller advised him that from the information he, Miller, got from Osheroff, that neither Brandt, Sobieraj or Kusper reported the cash received from these commissions. (Tr. 634.) Thus, it would appear that this early in the investigation Osheroff knew that Brandt, Sobieraj and Kusper were sharing in these cash commissions. Of course, the question arises as to what business Osheroff had in discussing his supposed secret investigation of this Income Tax case with broker Miller. Why was Osheroff giving Miller this information? Then Mr. Marzec went over to Sobieraj and Brandt, advised them

of the information he had obtained, and its source, and they both admitted they had not reported the cash commissions but they asserted that they assumed Marzec had paid the tax. (As to Sobieraj, Tr. 634; as to Brandt, Tr. 640-1.)

Shortly thereafter, Sobieraj called Marzec and said he would like to take him to dinner. Sobieraj had a "friend" whom Sobieraj represented to be an employee of the Internal Revenue Department (unidentified). At this dinner, they went through the procedure of the payment of these loans, Sobieraj received 1% cash on these loans. The "friend" asked whether any one saw the payment and then, when Marzec said "No," he stated that, since it was cash "it would be pretty hard to prove." (Tr. 638.) This testimony was stricken on the theory it was immaterial as to either the issues of a tax deficiency or an intent to evade. (Tr. 639.)

Accountant Wilson also was called as a government witness obviously to establish that Marzec had lied to his accountant and testified that in the latter part of 1950 he was employed by Marzec upon the recommendation of Richardson, that he went out to Marzec's home, examined his books and records with his Income Tax Returns and they were substantially in accord first for the year 1949 and then later for the year 1950. That as to both years, he inquired of Marzec whether he had any additional income and Marzec stated he did not. That around February of 1951 Marzec received a Form 1099 filed by Broker Banach, representing commissions to Marzec in the amount of $39,820 during the year 1950 (G. Ex. 30, Tr. 257); that Marzec denied receipt of this money and thereupon Wilson wrote a letter to Banach denying its receipt. (G. Ex. No. 31 dated Feb. 24, 1951, Tr. 259.) Four days later he received a letter from Banach's accountant (G. Ex. 32, Tr. 260) to the effect that Banach had practically absolute proof that Marzec had received these com-

missions; that he thereafter, on Marzec's behalf, filed an Amended Return for Marzec wherein Marzec picked up the additional income of $39,820 shown on Banach's Form 1099 even though he had distributed most of it to the others (Tr. 383) (G. Ex. 3, Amended Return filed June 29, 1951) and that he examined Banach's records before filing this return. (Tr. 264.) Wilson further testified that Marzec denied receipt of this money from Banach, both before the filing of G. Ex. 3, and subsequent thereto. (Tr. 364.) Marzec testified that Wilson told him that they were trying to settle the case without disclosing how the division was made and that when the case was settled this amended return would probably show overpayments or over reporting on his taxes. (Tr. 652.) The trial court refused to permit Marzec to show this latter situation. (Tr. 212-214, 231-233.)

On cross-examination Wilson admitted that in reply to his letter of February 24, 1951, to Banach denying the receipt of these commissions he had received a letter (G. Ex. 32) from Banach's accountant under date of February 28, 1951. This letter most certainly set forth most fully the true situation. (A. 127.) Wilson hedged when he was asked whether he had ever got a more straight, forthright, clear-cut letter from any firm of Certified Accountants as to the true situation. (Tr. 275.) He then testified within the next two weeks he went over and examined Banach's books. (Tr. 276.) Now certainly, at this time, accepting Wilson's version of the situation, Wilson knew that Marzec had received these Banach commissions; that Marzec's books did not reflect the Banach commissions and that since his Returns corresponded with the book, his Returns were false. Yet, thereafter, on April 12, 1951, he, together with Marzec, appeared at a conference at the Intelligence Unit, at which conference Marzec denied the receipt of the Banach money and Wilson undertook to sup-

port Marzec's position. (Tr. 282.) (D. Ex. 15; G. A. 473-476.) Such facts furnish strong corroboration of Marzec's version that both Wilson and Richardson, with knowledge of the true facts, advised him before this conference that it would be for the best interests of everyone and the case would be settled if he denied the receipt of any of these cash commissions. (Tr. 655-56.) Wilson on cross-examination admitted that Richardson, Marzec and himself might have discussed the fact that since cash was involved it would be hard to prove. (Tr. 293.)

Prior to this conference of April 12, 1951 the Agents had practically completed their "investigation". They then knew as did Wilson that Marzec's representation that he had reported his true income was false, yet no attempt was made to confront Marzec with the evidence they had uncovered. Had they confronted Marzec with the true facts of their then investigation, this whole picture would have come out. Osheroff, on cross-examination, admitted that at this conference on April 12, 1951, he was fairly certain that Marzec was lying as to Banach, and probably as to Miller. (Tr. 404.) He claimed that they were trying to get information from Marzec as to whether or not he would admit to a business deal with Banach. If this were true, and they were really wanting him to admit it, why didn't they ask him specific questions and confront him with the Banach checks at that time? They admittedly had about 75 of such checks then in their possession. Osheroff was so asked and he replied, "Was it our duty to present that?" (Tr. 405.) Osheroff then admitted that he knew that Marzec was sharing at least part of these commissions. He was then asked why Marzec wasn't asked with whom he was sharing these commissions, and Osheroff answered, "At that time he did not admit receiving commissions so how can you ask him how he shared them?" (Tr. 406.) Considering what transpired at this conference, it

would appear that this conference was designed primarily to get Marzec in and have him lie as to the receipt of the Banach commissions, and have him falsely state that he had no other unreported income. All to put Marzec in the worst possible light and to simultaneously refrain from asking him any specific questions which might bring out the true situation.

This formal conference was followed by another formal conference in the Regional Counsel's Office on Sept. 12, 1952. (D. Ex. 33, G. A. 477-502.) This was the final process of the Bureau. The Regional Counsel either forwarded the case to Justice for prosecution or sent the case back for civil settlement. Here Marzec had the benefit of both Wilson and Richardson. Marzec testified that prior to this meeting Richardson advised him that under no circumstances was he to answer any questions as to monies. (Tr. 659.)

Marzec was interrogated generally by Richardson just about nothing. Then Richardson interrogated Wilson. He talked about his preparing a net worth statement reflecting "little" unreported income, which he did not do at all, in that he had no work sheets for any work he did for Marzec. (Tr. 270.) He represented that he and Richardson checked Miller's books with his auditor item for item. (G. A. 487.) If they did they were misrepresenting. Miller was paying part of these commissions to Marzec by checks payable in cash. Marzec again denied receiving any commissions other than reported and he was then confronted with certain most incriminating evidence in the possession of the government. Richardson then took over and made it appear that he and Wilson had been deceived by Marzec, all ending up with his, Richardson's, statement to the effect that if Marzec had received these checks he was hooked and on his way to the penitentiary. (Tr. 658-59.) Presuming that Wilson and Richardson were as ignorant

of the true situation as they professed to be at the end of this conference, they then certainly learned the true situation. Why didn't they then ask for a delay, so they could get the detailed facts from "their" client, properly advise him and adequately protect his interests? And the only way to do that was for Marzec to tell the truth.

The trial judge refused to permit Marzec to testify as to the conversation he had with Miller immediately after this meeting about what transpired at the meeting. (Tr. 660.) Marzec then talked to Brandt about this meeting telling him that "Our attorney is not telling the truth," he has everything twisted and that there was "something wrong here." Brandt told him that everything would straighten itself out saying, "If you keep quiet this thing will come to a head and we will get our bill to pay." (Tr. 660.)[4] Marzec testified he heard nothing further from either Richardson or Wilson after this conference on September 12, 1952. (Tr. 661.)

On re-cross-examination Wilson produced a letter from his brief case from the Regional Counsel's Office dated September 28, 1952, addressed to Wilson advising him that Marzec's case had been forwarded to the Department of Justice, together with the envelope in which it came. (D. Exs. 16 and 16(a).) He admitted that he had no copy of a letter to Mr. Marzec advising him of the action taken. On re-direct he said he was almost certain that he had notified Marzec and Richardson, yet on re-cross he was unable to tell what he did physically or mentally on Marzec's behalf subsequent to September 12, 1952. Marzec's testimony was to the effect that after the conference of September 12, 1952, he never again heard of or saw either Richardson or Wilson. (Tr. 661.) The trial court refused

4. At the time of sentence the United States attorney and Brandt's attorney were agreed that Brandt had been outside the court room at all times and ready, willing and able to testify for the government.

to permit Marzec to show that he did not discover that his case had been cleared for prosecution until a year later when he was advised by Miller that it was in the office of the United States Attorney, that these others had furnished the Agents with affidavits, that they had not shared in these cash commissions and that during all this intervening period Miller had repeatedly advised him, Marzec, that his case was about to be settled (Tr. 662, Tr. 674, Offer of Proof) on the grounds that it was immaterial to any issues in the case. (Tr. 662.)

In Marzec's verified Motion to Vacate the Order of Jan. 23, 1957, for continuance and other relief, he alleged that it was the best of his recollection he was never asked by the Investigating Agents if he had shared these commissions with anyone else. The government answered this petition but did not deny this allegation. By the time the trial arrived both Wolfe and Osheroff testified that they had a conference with Marzec and Wilson on September 20, 1951; that Wolfe started questioning Marzec if he had failed to report any income in the line of commissions received and Marzec said, "I have nothing to say," and that then Wolfe asked Marzec if he got any commissions which he divided with the officers of the Union, and Marzec again stated that "I do not wish to say," or "to talk." That Wolfe then advised Wilson that "your client doesn't wish to talk" and Wilson said, "He doesn't talk to me. He doesn't wish to talk to me much." (Wolfe Tr. 432.) Osheroff's version of this conversation was substantially the same. (Tr. 396.) These Agents had no memoranda or diary entries covering the alleged conference. (Tr. 406-7.) Though Wilson was called as a government witness he was not asked concerning this alleged conversation. Marzec denied any such conference. (Tr. 746-747.) He said there were but two, the one in the special agents' office on April 12, 1951, and the one in the Regional Counsel's office on

September 12, 1952 and the government had conference memorandums on both! (D. Ex's. 15 and 33.)

Accepting the government's version as true, namely that such a conference did take place, Marzec's refusal to talk was, of itself, strong corroboration of the fact that he was sharing these commissions with these others, as these agents knew, and that they were requiring him to keep quiet. Additional investigation was required. And, for all practical purposes, they made none! They didn't even interview Kusper's secretary. (D. Ex. 22.) Special Agent Wolfe testified that after this alleged conference (where Marzec was supposed to have refused to talk when Wolfe asked him if he was sharing these commissions with these others) he sent Marzec a registered letter (G. Ex. 36, 37) and Wilson advised him that he could not get Marzec to come in. Our Revenue Statutes give Revenue Agents the right of subpoena.

What conversations did these Agents have with Wilson and Richardson outside of the presence of Marzec and what was their substance?

(a) Osheroff testified that he and Wolfe went out to Wilson's office on Sept. 28, 1951, to examine Marzec's books for 1950, and, at that time, Wilson told him that Marzec would not tell him anything and if he, Wilson, could withdraw gracefully from the case, he would do so. (Tr. 412.) Why didn't he withdraw? Wolfe's version of this conversation was a bit different. He testified that he never, at any time, had occasion to examine Marzec's books in that Osheroff had done that before he came to Wolfe. (Tr. 437.) That Osheroff, Wilson and he had a conversation on Sept. 28, 1951, at which time Wilson advised them that he had difficulty in getting information from Marzec and that he did not know whether anybody in the Union shared in the collections made by Marzec. This latter representation of Wilson was false in that the returns of Marzec, which he admittedly examined, showed oth-

erwise, namely, that Repsuk and Sobieraj were sharing and Wolfe knew it was false because he had the identical information. Why did Wolfe and Osheroff fail to call Wilson on his false representations. Wolfe also testified that Wilson further stated that he would just as soon get out of the case. (Tr. 441.) Probably what happened on Sept. 28, 1951, was that Wolfe and Osheroff went out to Wilson's office to get from Wilson certain of the Repsuk checks, Kusper spelled backwards, and the Sobieraj checks, all as shown from the Osheroff receipt to Wilson (D. Ex. 26, G. A. 345) which the Court refused to admit in evidence. (A. 222.) Wolfe admitted that at this conference when Wilson stated that he did not know whether anyone shared in these commissions that he, Wolfe, did not point out to Wilson that somebody did share in these commissions as shown on Marzec's returns. (Tr. 442.) Yet in the next breath, he said they wanted to get at the basis of the case, and that naturally the thought had occurred to him, a special agent of twenty years' experience that an employee in an inferior position must have had to share in any money he collected. (Tr. 442-4[illegible]. Why didn't they investigate?

(b) Wolfe testified that on Oct. 28, 195[illegible]lson and Richardson came to his office and said [illegible]they wanted to talk settlement and the proposition [illegible]ade by them "that they would settle for Marze[illegible] Joe Marzec would settle the full civil damag[illegible]s full civil income tax liability as set out by Osh[illegible]ff, and within five or six months." (Tr. 444.) T[illegible] record is silent as to who authorized them to make [illegible]ny such offer and who was to furnish the money. Certainly Marzec was not to do so. Who were Richardson and Wilson then talking for?

(c) Richardson also had a conference with Osheroff. Osheroff was anything but clear about this situation other than that it seemingly took place in Richardson's office. What was Osheroff doing over in Richardson's office? Osheroff says that he told Richardson that he wouldn't get anywhere dealing with him because it was more or less out of his, Osheroff's hands. (Tr. 412-13.)

(d) Wolfe also had a conference with Richardson. He testified that he had a slight conversation over at Max Miller's office when he was there trying to straighten out some of the evidence, and someone said, and he believed it was Richardson, that they were going to try to go up high to settle the case. (Tr. 447-481.) What business did Wolfe, the special agent, have talking about Marzec's case with broker Max Miller?

As would appear from all of the above conversations, Wilson and Richardson never, at any of these conferences, said one good or kind word on Marzec's behalf, or gave any facts to the agents which might be beneficial to Marzec. It is equally apparent from these same facts that Wilson and Richardson made no real effort whatsoever to attempt to settle this case, even though Brandt, Sobieraj, Miller, Richardson and Wilson were all telling Marzec to keep quiet, deny the receipt of these commissions and they would settle this case. Just look what Wilson did for Marzec on the Banach matter: (1) He wrote a letter to Banach, and a copy thereof to the Bureau, denying the receipt of any of these commissions; (2) He then with full knowledge that Marzec had received them, took Marzec into the Special Agent's office and has him deny the receipt of them and confirmed Marzec's representations; and (3) He then prepared an amended return for Marzec having him pick up all these Banach commissions even though he was liable for only his retained share. Wilson really "boxed Marzec in."

Now as to the non-sharing affidavits of Brandt, Kusper and Sobieraj which Special Agent Wolfe procured in the month of October, 1951. Sobieraj testified on behalf of the government, and it appeared that he furnished Agent Wolfe on Oct. 16, 1951, with an affidavit to the effect that his income tax returns were true and that he had received no other commissions than as shown by his returns. In other words, that he had not shared in these

cash commissions. (D. Ex. 17.) He testified that he was called down to Wolfe's office, interrogated before a stenographer by Wolfe, and she went out and about a half-hour later came back with the affidavit, and positively testified that Wolfe remained with him and that Wolfe did not dictate this affidavit. (Tr. 318-19.) Thus, we have the unbelievable story that this stenographer prepared this affidavit. Osheroff's story about these affidavits was even worse. He testified that Sobieraj, Brandt and Kusper gave statements to the Special Agents. (Tr. 418.) When asked whether he was there when these statements were taken or whether he was familiar with them, he stated, "I am familiar with them." (Tr. 418.) But Osheroff had been in contact with Sobieraj. He was asked whether he had conducted a simultaneous investigation of Sobieraj and he stated, "We had Sobieraj in, the situation being that nobody was telling anything." (Tr. 419.) And no one was investigating anything! The Trial Judge refused to permit defendant's counsel, on cross-examination, to even ask Agent Wolfe the circumstances under which he procured this affidavit from Sobieraj and similar affidavits from Brandt and Kusper. (Tr. 462, offer of proof, Tr. 463.) Why were these three non-sharing affidavits obtained from the very three persons who were actually receiving most of these commissions, and made a part of the file of Marzec's case?

Broker Miller's relationship with Special Agent Wolfe was also a bit questionable. As stated, Wilson, on Sept. 28, 1951, delivered to Osheroff and Wolfe certain Respuk checks and Sobieraj checks. Part of them were apparently returned as shown on the receipt. The others remained in Wolfe's possession. When Marzec's attorneys were attempting to get information to give the government they sought the return of these checks, and the balance of the checks from Wolfe, but were not successful. Marzec then contacted broker Miller and broker Miller was able

to arrange with Special Agent Wolfe to turn over those checks to Marzec's attorney. (Miller Tr. 189, Offer of Proof, Tr. 628-9.) Wolfe delivered these checks to Marzec's attorneys on September 16, 1954, and took a receipt for same. (Tr. 465, D. Ex. 21.) The Court refused to permit this receipt and these checks into evidence. (Tr. 805, 807.) Marzec's attorneys, seeking to gather evidence to give the United States Attorney, could not get Marzec's checks back from Agent Wolfe. Instead Marzec had to contact Miller and have Miller arrange with Wolfe for their return.

Osheroff, after 3 years of employment in the Bureau, left the Service in October of 1951, and immediately entered the employment of Arthur Goldberg, a CPA and in turn went to work for Miller. (Tr. 373.) He denied that Goldberg was then Miller's accountant stating, "I don't believe he was his accountant at that time, he became his accountant subsequently, I believe." And he also denied that he immediately went to work on Miller's records. (Tr. 417.) Miller testified that Goldberg had been his accountant for years. That Osheroff was Goldberg's employee who did work in Miller's office but he, Miller, dealt with Goldberg. (Tr. 192-194.)

In his long statements given to the United States Attorney on November 8, 1954 (D. Ex's. 19 and 20), Marzec set forth and advised him concerning the ownership (by way of a Land Trust) of a certain twelve-flat building located at 2729-37 West Leland Avenue, Chicago, Illinois; that in the spring of 1951, Richardson had sought a loan on said building purportedly for himself; that broker Miller had shortly thereafter taken over the negotiations and completion of said loan; that Osheroff, shortly after he left the Service, began making payments on said loan; and that when Marzec asked Miller about this latter fact, Miller stated that Osheroff's mother, had some money, and

he bought it for her (D. Ex. 20, p. 84). It was unfortunate that the United States Attorney failed to fully investigate the facts given to him pertaining to this situation. If he did investigate them, it was culpable that he did not produce them at the trial since this building may well have been the "pay-off", much like the $10,000 in the *Shotwell Manufacturing Company* case.

At the trial of Marzec, Miller testified that Richardson had nothing to do with this loan (Tr. 193); that Miller had acquired it and he made the mortgage himself with the union; that he held the building for about two or three years while Osheroff worked for Goldberg (and in turn for Miller); and that Osheroff came to him, said he had a little money, that he would like to buy a piece of property, and he sold the property to Osheroff, who took over the beneficial certificate on the trust and made the payments. (Tr. 196.) Osheroff's version was a bit different. He testified that the property was listed for sale in the Chicago Tribune in December of 1951, after he had left the government (Tr. 422); that he saw an advertisement in the paper regarding the piece of property, and it turned out to be Mr. Miller selling a piece of property; that a mortgage for $34,000 was placed on it on June 12, 1951; and that he, Osheroff, had bought the property in January of 1952. (Tr. 415, 416.)

The United States Attorney had all this information from Novemebr 8, 1954. It would seem that in fairness to Mr. Marzec that he should have most fully investigated this matter, and of his own volition fully brought out the true facts as to this entire suspicious transaction instead of permitting his own witness to give conflicting versions of same. This building might well have been the payoff.

APPENDIX C.

The "Corrupt Record."

Sobieraj's Testimony.

Before Sobieraj testified against Marzec, the government and its representatives, the United States Attorney and Worcester, knew (1) that Sobieraj had furnished the investigating agents with a false affidavit that he had reported all his income and had not shared in these cash commissions; (2) that he had testified falsely before the Grand Jury to like effect; (3) that he was not turning into a partnership he had with his mother-in-law all the commissions he received since agents had compared his individual returns with those of the partnership and when he undertook to so testify before the Grand Jury, they had called this fact to his attention (D. Ex. 18); and (4) that he had received certain commission checks aggregating approximately $2,500.00 (D. Ex. 27-31) from Marzec payable to both himself and the parnership which never reached the partnership and were not reflected in the supposed partnership record (G. Ex. 33) through an examination of Marzec's returns, his checks, and the supposed partnership record, all as reflected by the testimony of Worcester, and particularly his voluminous computations (G. Ex. 33, 33A-B, G. A. 346, 352, 395). These computations could not have been prepared after Sobieraj testified since he and Worcester testified the same day (G. A. 224).

In addition, at the time he appeared before the Grand Jury, Sobieraj produced and made available to the Government (G. A. 232) a little black book (G. Ex. 33), the entries of which reflected the receipt of some commissions from Marzec, cash and checks. It gave this book no credence as

reflected by the indictment which charges Sobieraj with the receipt of far greater commissions from Marzec than shown in said book. The reasons it gave this book no credence most probably were because its entries showed only the commissions Sobieraj was sharing with his mother-in-law, the distribution between themselves, and the receipt of her share, and reflected that it was her book, rather than the book of Sobieraj or that of the partnership (G. A. 315, 317, A. 269-270).

With all this knowledge and information and with full knowledge of Sobieraj's propensity towards prevarication, the United States Attorney called Sobieraj as a witness against Marzec, permitted him to and had him repeatedly testify that *all* the commissions he received from Marzec, checks and cash, were turned into the partnership and were reflected in said little black book (G. Ex. 33) which was the partnership record kept by his mother-in-law in the regular course of business (G. A. 212, 213, 215, 245)!

Much of Sobieraj's testimony before the Grand Jury was directly contrary to that he gave at the trial. Both places he asserted that there was no agreement between the parties as to the distribution of these commissions in that while he asked for a share of them, he accepted whatever Marzec gave him. Before the Grand Jury, he admitted only the receipt of the commission checks he had received from Marzec, and asserted that they were reported by him in his tax returns, and that he had reported his true income, thus denying the receipt of any of these cash commissions. At the trial he admitted the receipt of checks and cash from Marzec (G. A. 212). Before the Grand Jury he testified that he had never discussed these commissions with Brandt, and never offered to help Marzec. At Marzec's trial, he testified that after this investigation commenced, he and Brandt agreed that Marzec could keep all of the future commissions, and Marzec kept them (G. A.

243). This investigation commenced late in 1950 and extended through part of 1952. Special Agent Wolfe, on March 5, 1952, procured an affidavit from Broker Miller to the effect that he had dealt only with Marzec (D. Ex. 11, A. 223).

The court excluded Marzec's offered evidence that after the investigation had commenced, Sobieraj, in 1952, was in a position to demand and did demand one-half of the commissions Marzec collected, and Marzec distributed said one-half to Sobieraj by way of checks which Marzec then had in his possession. The trial court excluded this evidence on the theory that it was immaterial and had no probative value (G. A. 349-350). It only proved that Sobieraj's testimony given at the trial of Marzec that there was no agreement as to the division of the commissions was false, and likewise proved that his given testimony that Marzec had kept these commissions was false. The trial court also excluded Sobieraj's Grand Jury testimony (D. Ex. 18) on the theory that it was not impeaching and nothing was shown as to the falsity or inconsistency of his testimony before the Grand Jury and at the trial (A. 223). The trial court kept most everything beneficial to Marzec and his side of the case from the jury.

Worcester's Testimony.

The Government procured this indictment against Kusper charging him with the receipt of part of these cash commissions and in specific amounts for each of said years. This action on its part indicates that it then recognized and knew that Kusper had furnished the investigating agents with a false affidavit that he had not shared in these cash commissions and had falsely testified to like effect before the Grand Jury (G. A. 6, 19, 39). The indictment so procured of itself presupposed that the Government had substantial, or at least some, evidence that Kusper had shared in these cash commissions.

One of the witnesses the Government had before the Grand Jury against Kusper was Kusper's former secretary whom the investigating agents had never interrogated. Petitioner and his counsel procured from her a lengthy statement (D. Ex. 22) incriminating Kusper and delivered it to the Government in February of 1955, and it was used as a basis for her Grand Jury testimony (A. 227). On October 19, 1955, Worcester had procured an additional affidavit from her incriminating Kusper (D. Ex. 51). The trial court kept this evidence out (A. 227). The Government in its subsequent pleadings and in open court affirmed that Kusper had shared in these cash commissions and that it had evidence to that effect, even aside from the testimony of Marzec (G. A. 31).

The United States Attorney and Worcester knew that Kusper was sharing in these commissions and under suspicious circumstances through the Repsuk (Kusper spelled backwards) checks; they knew that Kusper was involved in the receipt of these cash commissions through the testimony of one of their own witnesses, Broker Milton, who testified that when he first sought a loan at the Union he was required to put the commission up in escrow with Kusper by way of a cashier's check endorsed by his attorney (A. 100-102, 105-107) and they knew from attorney Mroz, Kusper's assistant, whom they interviewed, that Kusper was concealing the pay-offs to himself by checks to his wife in her maiden name. The trial court kept this evidence out (A. 190-196, 194). The Government admitted that they knew other payments were made to Kusper in the name of his brother-in-law (A. 195). It even knew that Sobieraj was splitting commissions with Kusper. Sobieraj denied this fact on cross-examination (G. A. 226) and the Government established otherwise on redirect (G. A. 242). On January 23, 1957, the Government advised the trial court that he had obtained "new and ad-

ditional evidence'' against Kusper (A. 21). On November 19, 1957, it admitted in the court below, during the oral argument, that such new and additional evidence consisted ''only'' of evidence that Kusper had received cash commissions from others of approximately $2,000.00 which he had not reported.

With all this knowledge, his own acts and admissions, the United States Attorney on February 7, 1957, called Worcester as a witness against Marzec and permitted him to and had him testify to substantial effect that he could not find, and the Government had no evidence, that Kusper had shared in these cash commissions (G. A. 302, 303, 304, 305)!

The United States Attorney did not believe Worcester's testimony. On February 13, 1957, in his argument to the jury he stated: ''I think the evidence is quite clear that whenever possible Mr. Marzec obtained cash from brokers and that he distributed some of that unquestionably to these other three''. (Original transcript of record, Court of Appeals, 954). On February 18, 1957, the Government dismissed the indictment against Kusper for ''lack of sufficient evidence'' (A. 297).

LIBRARY
SUPREME COURT, U.S.

FILED
MAR 11 1958
JOHN T. FEY, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

No. 772

JOSEPH T. MARZEC, *Petitioner,*

v.

UNITED STATES OF AMERICA, *Respondent.*

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

REPLY BRIEF

ELLIS N. SLACK,
Shoreham Building,
Washington, D. C.,

JOSEPH A. STRUETT,
105 West Madison Street,
Chicago 3, Illinois,

Counsel for Petitioner.

INDEX

Page

Conclusion 5

CITATIONS

Glasser v. United States, 315 U.S. 60 5

Hawk v. Olsen, 326 U.S. 271, 278 5

Whiskey Cases, 99 U.S. 594 4

IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

No. 772

JOSEPH T. MARZEC, *Petitioner*,

v.

UNITED STATES OF AMERICA, *Respondent*.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

---

REPLY BRIEF

---

1. On page 4 of its Brief in Opposition the Government states that on January 18, 1957 "the United States Attorney moved for a severance, stating that Struett had represented at various times that Petitioner would be available to testify on behalf of the Government; that four days earlier however Struett had advised that Petitioner would not testify so long as he remained joined with the other defendants * * *." The implied effect of this statement is that Petitioner's counsel had represented to the Government that Marzec

would be available to testify against the other defendants even though joined with them for trial, and on January 14, 1957 he shifted his position. This supposed shift of position was denied in Petitioner's Motion to Vacate and the true facts are therein set forth. (A-28-78). The Government had three different versions of its understanding with respect to Petitioner's position about testifying.[1] As fully appears in Petitioner's Motion to Vacate, Marzec was at all times ready and willing to testify against the other three defendants, but he could do so only if a severance was granted as to him. Obviously Marzec could not be tried jointly with the other defendants if he was a necessary Government witness and the Government finally conceded this on January 23, 1957 (A-21).

The Government states that Sobieraj and Kusper kept records of all the commissions they received and that Brandt and the Petitioner did not (Brief 6). None of the defendants except Marzec kept any records of the receipt of the commissions. Marzec still retained in his possession a few fragmentary records show-

---

[1] (1) In its Motion for Severance filed January 18, 1957 the Government alleged that Petitioner's counsel had assured it that Marzec would testify against the other defendants even if joined and that it wasn't until January 14, 1957 that counsel advised to the contrary.

(2) At the hearing on January 23, 1957 it qualified that statement by asserting in open court that the Government was under the impression that Marzec would be available to testify even though joined.

(3) In its Answer to the Motion to Vacate the Government alleged that at all times after January 23, 1956 when Petitioner's Motion for Severance was denied until January 14, 1957 it did not know whether Marzec would testify against the others if joined (A-82).

ing at least that he had shared these cash commissions with the others. Brandt who had always received his share in cash had no records but finally admitted that he had received the commissions in substantially the same amounts as alleged by Marzee (G.A. 302).

At the trial the Government had Sobieraj produce a small black book belonging to his mother-in-law which reflected some of the commissions distributed to him by Marzee and which he testified he had shared with her. Sobieraj had produced this same black book before the Grand Jury and the Government had rejected it as is indicated by the charges of the indictment. The Government knew that Sobieraj was not turning all his commissions into the partnership. Despite this knowledge the Government put Sobieraj on the stand and had him testify that all the commissions he received from Marzee were turned in to this partnership and were reflected in the little black book (Pet. 17, 57-59).

The indictment against Kusper covered only the cash commissions he had received from Marzee since the payments received by check had been reported. His books and records did not reflect the cash payments (G.A. 303). The Government on January 23, 1957 advised the Court that it had procured new and additional evidence against Kusper (A-21). On February 7, 1957 Worcester testified that he could not find and the Government had no evidence that Kusper had shared in the cash commissions (G.A. 302-305). On February 13, 1957 the United States Attorney told the jury that the evidence was quite clear that whenever possible Marzee obtained cash from the brokers and that he unquestionably distributed some of that cash to the other three.

2. The Government does not deny that had it not been for the cooperation and testimony of Petitioner the other three defendants could not have been indicted and two of them successfully prosecuted (Pet. P. 11). It attempts to avoid the rule of the *Whiskey Cases*, 99 U.S. 594, by asserting that there was no promise of immunity and further that there was a "scrupulous refusal to extend any *quid pro quo* whatever". This argument loses sight of the fact that Petitioner's "equitable title to mercy" (Immunity) does not depend upon an agreement between the parties but is implied from the benefits given and received—much the same as in the law of quasi contracts.

3. The Government argues that it did nothing to lead Petitioner's counsel to believe that it was unnecessary for him to prepare for trial. The record indicates that on January 23, 1956 the Government represented that it had reason to believe that Petitioner would testify for the Government (G.A. 31). It then kept the Petitioner joined with the other three defendants until January 23, 1957 during all of which time it refused to clarify its position as to how it intended to proceed with all the defendants joined for trial. It knew that Petitioner's counsel was making no preparation for trial and was unprepared (Pet. 12-14, 22-28). It now urges however that if counsel was unprepared "he had only himself to blame" (Br. 13).

The Government's untenable position in this entire matter is further emphasized by its final contention that Petitioner's guilt was so clear that it is difficult to believe that any amount of preparation could have changed the result. This Court has said many times that the right of a defendant to be represented by prepared counsel is so important that courts are not per-

mitted to speculate on the degree of prejudice which results from the denial of such a right. *Glasser* v. *United States*, 315 U.S. 60; *Hawk* v. *Olson*, 326 U.S. 271, 278. Petitioner's right to prepared counsel is so fundamental that its denial cannot be excused or explained by the bare statement that in the opinion of Government counsel his guilt was clearly established.

4. The Government's Brief glosses over the denial of due process and the unfair treatment accorded Petitioner by treating Petitioner's case as separate and distinct from the cases of his superiors. All these cases arose out of the same facts, they were all joined together in one indictment and disposed of practically as one case. It thus says that "the soundness" of the dismissal of the indictment against Kusper has no bearing on the merits of Petitioner's case (Br. 13). It also urges that the basic unfairness of the sentence imposed upon Petitioner in relation to the sentences imposed upon Brandt and Sobieraj raises no appellate question.

CONCLUSION

The Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

ELLIS N. SLACK,
Shoreham Building,
Washington, D. C.,

JOSEPH A. STRUETT,
105 West Madison Street,
Chicago 3, Illinois,

Attorneys for Petitioner.

LIBRARY
SUPREME COURT, U. S.

Office - Supreme Court, U.S.
FILED
MAR 5 1958
JOHN T. FEY, Clerk

No. 772

In the Supreme Court of the United States

OCTOBER TERM, 1957

JOSEPH T. MARZEC, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

J. LEE RANKIN,
Solicitor General,
CHARLES K. RICE,
Assistant Attorney General,
JOSEPH F. GOETTEN,
RICHARD B. BUHRMAN,
Attorneys,
Department of Justice, Washington 25, D. C.

INDEX

	Page
Opinion below	1
Jurisdiction	1
Questions presented	2
Statute involved	2
Statement	3
Argument	8
Conclusion	14

CITATIONS

Cases:

Berra v. *United States*, 351 U. S. 131	13
King v. *United States*, 203 F. 2d 525	10
Whiskey Cases, 99 U. S. 594	8, 9, 10

Statute:

Internal Revenue Code of 1939, Sec. 145 (b) (26 U. S. C. 1952 ed., Sec. 145 (b))	2, 3
Internal Revenue Code of 1939, Sec. 3616 (a) (26 U. S. C. 1952 ed., Sec. 3616 (a))	13

In the Supreme Court of the United States

OCTOBER TERM, 1957

No. 772

JOSEPH T. MARZEC, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the Court of Appeals (Pet. 33–38) is reported at 249 F. 2d 941.

JURISDICTION

The judgment of the Court of Appeals was entered on December 13, 1957 (Pet. 33), and, by order of Mr. Justice Clark, the time for filing a petition for a writ of certiorari was extended to February 10, 1958. The petition was filed on February 6, 1958. The jurisdiction of this Court is invoked under 28 U. S. C., Section 1254 (1).

QUESTIONS PRESENTED

1. Whether petitioner, having provided the Government with certain information regarding attempted evasion of income taxes by himself and others, thereby acquired an "equitable right to immunity" which precluded his being tried for attempted evasion of his own taxes.

2. Whether the trial court abused its discretion in denying a continuance on defense counsel's representation that he was not prepared for trial and wanted to apply for executive clemency, when it appeared that fourteen months had elapsed since the indictment was returned and several continuances had already been granted.

3. Whether petitioner was deprived of due process of law by various alleged trial errors.

STATUTE INVOLVED

Internal Revenue Code of 1939:

SEC. 145. PENALTIES.

* * * * *

(b) *Failure to Collect and Pay Over Tax, or Attempt to Defeat or Evade Tax.*—Any person required under this chapter to collect, account for, and pay over any tax imposed by this chapter, who willfully fails to collect or truthfully account for and pay over such tax, and any person who willfully attempts in any manner to evade or defeat any tax imposed by this chapter or the payment thereof, shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, be fined not more than $10,000, or imprisoned

for not more than five years, or both, together with the costs of prosecution.

* * * * *

(26 U. S. C. 1952 ed., Sec. 145.)

STATEMENT

On December 15, 1955, there was filed in the United States District Court for the Northern District of Illinois an eight count indictment against petitioner, Frank Brandt, Bruno Sobieraj and Stanley Kusper. In separate counts, each defendant was charged with having willfully attempted to evade and defeat his individual income taxes for the years 1949 and 1950, in violation of Section 145 (b) of the Internal Revenue Code of 1939, by failing to report stated amounts of income received from a joint venture conducted by the four defendants. (AA. 5–7.)[1] Petitioner entered a plea of not guilty and moved for a severance, which was denied on January 23, 1956. (AA. 13, 89.) The case was originally set for trial in February, 1956, but was continued from time to time. On December 5, 1956, it was set down for trial on February 4, 1957. (AA. 85; GA. 112.) The latter date was agreed upon because petitioner's counsel, Joseph R. Struett, was to depart for a world cruise in March, 1957. (AA. 89; GA. 106, 110; Pet. 38.) On January 18, 1957,

[1] The record certified to this Court consists of (1) the one-volume Appellant's Appendix filed in the Court of Appeals, designated herein as "AA."; (2) the one-volume Government's Appendix filed in the Court of Appeals, designated herein as "GA."; and (3) the 33-page transcript of proceedings on February 21, 1957, when sentences were imposed, not cited herein.

Sobieraj withdrew his plea of not guilty and entered a plea of guilty, offering to testify for the Government. (AA. 15–17.) On the same day, the United States Attorney moved for a severance, stating that Struett had represented at various times that petitioner would be available to testify on behalf of the Government; that, four days earlier, however, Struett had advised that petitioner would not testify so long as he remained joined with the other defendants; and that the Government was of the opinion that petitioner, if available as a witness against Brandt and Kusper, could present valuable and direct evidence against them and thus materially shorten their trial. (AA. 15–16; GA. 115.) The Government's motion for severance was prompted by the new situation brought about by Sobieraj's plea of guilty and his offer of cooperation with the Government. (AA. 20–21.) It was granted on January 23, 1957, after Struett stated that he had no objection to it. (AA. 23.) Petitioner's case was set for trial first, to be followed immediately by those of Brandt and Kusper "in alphabetical order". (AA. 27.) Brandt then entered a plea of guilty. (GA. 93.) Struett moved for a continuance on the grounds that he was not prepared for trial and that he desired time to apply for "executive clemency" for petitioner. The motion was denied. (GA. 93–94, 119, 121).

On February 18, 1957, after a jury trial, petitioner was found guilty on the two counts in which he was charged, and on February 21, 1957, he was sentenced to concurrent prison terms of three years on each count. (AA. 279, 306.) On their respective pleas of

guilty, Sobieraj received a one-year suspended sentence and was placed on probation for two years, and Brandt received a one-year prison sentence. (AA. 301, 302.) The indictment against Kusper was dismissed, on the Government's motion, for lack of evidence. (AA. 297, 298; GA. 303, 306–308.)

The evidence to support the verdict against petitioner may be summarized briefly as follows:

During the prosecution years, petitioner was employed by the Polish Roman Catholic Union, a fraternal organization owning assets of about $38,000,000, a large part of which was invested in real estate mortgage loans. (AA. 94.) The loans had to be approved by the Treasurer (Brandt), backed up by an indepedent appraiser (Sobieraj). (AA. 99, 113; GA. 208–209). Petitioner, a licensed real estate broker, "brought in" applications for mortgage loans and performed certain duties with respect to them. (AA. 94, 138; GA. 223.) Although it was no part of petitioner's duties to the Union to collect commissions from mortgagors for the approval of their loan applications (AA. 138), he did in fact collect such commissions (AA. 96, 99, 101–108, 120; GA. 272). They were paid to petitioner by six mortgage brokers and real estate brokers negotiating loans on behalf of their clients. (AA. 96, 100, 103, 107, 119, 120; GA. 463–464.) These commissions usually ranged between 3% and 5% of the face amount of the mortgages, but in some instances petitioner exacted as much as 6%. (AA. 97–98, 100, 104, 107–108, 119; GA. 385, 422.) In a few cases, the commissions were paid by check to petitioner's order (AA. 95, 110;

GA. 169), but the great majority were paid to him in cash or by cashier's checks, as petitioner had requested (AA. 98, 101, 104, 119, 120; GA. 335–336).

Petitioner did not retain all of the commissions for himself but was obliged to share them with the Union's Treasurer, Brandt, with the outside appraiser, Sobieraj, and, to a lesser extent, with the attorney who did legal work for the Union, Kusper. (GA. 463–464). When petitioner was paid by check, he paid Sobieraj and Kusper their shares by check drawn on his own (petitioner's) bank account. (GA. 336–337.) When petitioner received cash, he paid Sobieraj in cash. (GA. 341.) Brandt would never accept checks and always insisted that petitioner pay him in cash. (GA. 336, 338.) Sobieraj's share ranged between one-half of one percent and one percent of the amount of the loan, and Brandt's share was one percent. (GA. 208–209, 233–234, 340.) Sobieraj and Kusper kept records of all the commissions they received; Brandt and petitioner did not. (GA. 209–212, 302, 303, 384–386, 503–511.) Petitioner did, however, record on his books and report on his income tax returns the commissions he received in the form of checks, claiming as deductions the checks he paid out to the other defendants. (GA. 252, 256, 335–336, 390, 400, 458, 460.) Petitioner's net income from commissions as reported on his income tax returns and as shown by the evidence at the trial was as follows (GA. 458, 460, 463–469):

Year	Reported	Corrected	Unreported
1949	$8,004.53	$35,879.20	$27,874.67
1950	23,482.05	45,153.05	21,671.00

The understatement of income on petitioner's returns resulted in tax deficiencies of $9,326.58 in 1949 and $9,403.17 in 1950, compared with tax liabilities reported by petitioner for those years of $1,397.64 and $5,077.72. (AA. 183–184; GA. 457, 459, 467, 470.)

To show willfulness, the Government presented evidence that petitioner reported only those commissions he received in check form (never those received in currency or by cashier's checks), as well as evidence concerning petitioner's conduct during the investigation. Investigation began late in 1950, when Revenue Agent Osheroff discovered, in the course of examining the tax returns of one Henry Banach, that some $30,000 was shown on Banach's books as having been paid to petitioner in 1949. (AA. 146–147; GA. 247–248, 260.) In April, 1951, petitioner stated to the Treasury agents under oath that he had not received any commissions from Banach, and he made the same representation to his own accountant. (GA. 183–186, 254–255, 258.) These denials were false, as petitioner admitted at the trial. (GA. 382–383, 391–392.) Petitioner had, as a matter of fact, received from Banach more commissions, in both 1949 and 1950, than he had received from any of the other five brokers with whom he did business. (GA. 463–464.)

In June, 1951, petitioner filed an amended individual income tax return for 1950 in which he reported additional income of $39,820, the exact amount Banach had reported to the Government (on an information return) as having been paid by him to petitioner for commissions in 1950. (GA. 186, 188, 190, 461–462.) In September, 1951, petitioner at-

tended another conference with the agents, accompanied by his accountant, and, when asked whether he had received any unreported commissions, replied that he had nothing to say. (GA. 259, 276–277.) It was not until three years later, when his prosecution was imminent, that petitioner advised a representative of the Government that he had received unreported commissions. Thus, in November, 1954, he appeared in the United States Attorney's office and offered to cooperate with the Government by disclosing the truth about the commissions. (GA. 279–280, 392.) Later petitioner was permitted to appear before the grand jury, at the request of his attorney, but was warned that he did not have to testify and that he might very well be indicted. (GA. 410–411.)

During the course of his summation to the jury, defense counsel made the following statement (Pet 33, GA. 430):

> There isn't any question in this case and never has been that Mr. Marzec is guilty in the sense that he failed to report his income in the years in question in the amounts he should have at the time he should have.
>
> I couldn't argue conscientiously to you people otherwise. He has told the Government that and he has admitted it to me and I am not going to deceive you.

ARGUMENT

1. Petitioner contends (Pet. 8–12, 26–27) that he acquired an "equitable right to immunity from prosecution" by furnishing the Government evidence against the three other defendants. His sole reliance is upon the *Whiskey Cases*, 99 U. S. 594. It was

there held that a district attorney has no authority to contract that a defendant shall receive immunity in return for disclosures against his accomplices; that, therefore, no contract of immunity can be pleaded in bar of proceedings against such defendant; that the defendant has no more than "an equitable title to the mercy of the executive" (99 U. S. at 596); and that this claim to consideration can come before the court only by way of a motion for continuance to give the defendant time to make application to the executive. In the instant case, the record shows affirmatively that, although defense counsel did attempt, from time to time, to enter into an agreement with the Government, none was ever made. (GA. 81–82, 117.) Neither the United States Attorney nor the Internal Revenue Service made any promise whatever to petitioner, save for an offer that if he would plead guilty to one count the Government would move to dismiss the other. (AA. 82–83.) On the contrary, representatives of the Government repeatedly took pains to inform petitioner and his counsel that the Government was not interested in obtaining any evidence from petitioner unless it was plainly understood that he was being offered no immunity and no other consideration except that which the court might see fit to give him. (GA. 114, 425; AA. 21, 82; Pet. 34–35.)[2] Thus, the decision in the *Whiskey Cases*, even assuming that

[2] Petitioner's "cooperation" with the Government, which began four years after the investigation got under way (*supra*, pp. 7, 8), was doubtless impelled by the belief that it would serve his own interests. By the end of 1954, when the "cooperation" began, the United States Attorney was about to seek petitioner's indictment, charging him with the receipt of

it has any continuing vitality,' does not apply here. Whatever the equities may be when an offer of evidence is induced by the prosecution's promises, this is a case in which there was a scrupulous refusal to extend any *quid pro quo* whatever.

2. Petitioner urges (Pet. 12–15, 27–29) that he was deprived of the assistance of counsel because his attorney was not prepared for trial. The record shows that the indictment was returned in December, 1955; that the case was first set for trial in February, 1956, but was thereafter continued from time to time; that, near the end of 1956, it was set for February 4, 1957, a date agreed upon between the parties because defense counsel planned to take an extended vacation beginning in March, 1957; and that, when the trial date arrived, defense counsel announced that he was not prepared for trial. (*Supra*. pp. 3–4.) Petitioner professes to have been surprised by the entry of a plea of guilty by Sobieraj on January 18, 1957, and the granting of the Government's motion for sev-

---

income to the extent of the gross commissions collected by him. (Pet. 9; *supra*, pp. 8.) At that time, the other defendants denied having shared in the commissions, and petitioner had never alleged that they had so shared; hence the evidence of guilt pointed to petitioner alone. (Pet. 9; *supra*, pp. 7–8.) By disclosing his distributions to the others, petitioner reduced the amount of income chargeable to him.

[3] The court below was of the view that enactment of the Federal Probation Act laid to rest any lingering notion that a court should stay its hand so that an offender who has turned "state's evidence" may first seek an executive dispensation. See discussion in *King* v. *United States*, 203 F. 2d 525 (C. A. 8). It was also of the view that, in any event, the facts of the instant case do not bring it within the doctrine of the *Whiskey Cases*.

erance five days later (Pet. 13, fn. 9), but petitioner had been put on notice three months earlier by the United States Attorney's office that in the event of a severance it would be necessary to try petitioner first (GA. 103; *supra*, pp. 3–4). If counsel was unprepared for trial after the lapse of some fourteen months from date of return of the indictment, he had only himself to blame. The Government did nothing to lead him to believe that it was unnecessary for him to prepare for trial. (GA. 116.) The granting of a motion for continuance is a matter within the trial court's discretion, and certainly there was no abuse of discretion in the circumstances presented here. Moreover, petitioner's guilt is so plainly established (*supra*, pp. 5–8) that it is difficult to believe that any amount of preparation could have changed the result. Petitioner ventures no specific suggestion as to how the denial of his motion may have been prejudicial.[4]

3. Petitioner contends further (Pet. 15–25, 29–30) (a) that the trial court erred in excluding Defendant's Exhibits 45 and 46; (b) that the Government knowingly introduced false testimony by Sobieraj and by Special Agent Worcester; (c) that the Government improperly stifled the prosecution of Kusper; (d) that the jury instructions were inadequate; and (e) that petitioner's 3-year prison sentence was too severe.

a. Defendant's Exhibits 45 and 46 have not been

[4] When defense counsel complained that he was not feeling well at the conclusion of the Government's evidence, the court continued the case from Thursday, February 7, 1957, to Monday, February 11, 1957. (Pet. 38; AA. 185–186.)

printed or certified to this Court.[5] At all events, it is difficult to understand how petitioner can claim prejudicial error resulted from their exclusion when he himself states (Pet. 15):

> From this evidence, as the court below was advised, the Government could have readily and easily established the charges of its indictment against Marzec.

b. The charge (Pet. 17–18) that Sobieraj and Worcester testified falsely, and that the Government knew it, has no foundation in the record, as the Court of Appeals pointedly stated (Pet. 37). Sobieraj admittedly did not report on his tax returns all of the commissions he received from petitioner, but he did keep a record of them. Petitioner kept records only as to those few items reported on his income tax returns, *i. e.*, those paid to him by check. (GA. 213; *supra*, p. 6.) If Sobieraj's records were inaccurate in minor respects, those inaccuracies were brought out at the trial and hence were before the jury. Certainly, such inaccuracies as there may have been were not of a kind to have any impact on the verdict.

Treasury Agent Worcester's testimony merely summarized the Government's proof. (GA. 298.) Worcester gave petitioner credit for commissions he had paid to Sobieraj and Kusper, based on the detailed records maintained by Sobieraj and Kusper.

---

[5] According to the Government's brief in the Court of Appeals (p. 39), these exhibits were excluded because they were not original records, nor were they based upon records from which their accuracy could be inferred.

(GA. 302–303, 306–308.) Because Brandt kept no records, Worcester gave petitioner full credit for having paid Brandt the commissions petitioner claimed to have paid him. (GA. 302.)

c. The two counts of the indictment charging Kusper with attempted evasion of his income taxes were dismissed on the Government's motion because it was concluded that there was a lack of sufficient evidence to prove them. (*Supra,* p. 5). The soundness of this conclusion has no bearing on the merits of petioner's case.

d. Petitioner now complains that the instructions to the jury were not "adequate * * * on behalf of Marzec" (Pet. 22). However, with one immaterial exception,[6] petitioner requested no additional instructions at the trial (AA. 251–255), and he agreed that the charge as a whole was fair. (Pet. 37.)

e. The concurrent sentences imposed upon petitioner were well within legal limits and raise no appellate question.

---

[6] Petitioner requested that the court instruct the jury that it might find him guilty of the "lesser included offense" described in Section 3616 (a) of the Internal Revenue Code, 1939. Under *Berra* v. *United States*, 351 U. S. 131, the refusal of this request was, of course, proper.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

J. LEE RANKIN,
Solicitor General.
CHARLES K. RICE,
Assistant Attorney General.
JOSEPH F. GOETTEN,
RICHARD B. BUHRMAN,
Attorneys.

MARCH 1958.